LIBRARY
SUPREME COURT, U. S.

# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 1965

No. 65

ROBERT D. WATKINS, APPELLANT,

*vs.*

J. F. CONWAY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

FILED JANUARY 26, 1966
PROBABLE JURISDICTION NOTED MARCH 21, 1966

BLANK

PAGE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1965**

## No. 954

ROBERT D. WATKINS, APPELLANT,

*vs.*

J. F. CONWAY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA

## INDEX


| | Original | Print |
|---|---|---|
| Record from the Superior Court of Fulton County, State of Georgia | | |
| Original petition | 23 | 1 |
| Amendment to answer and order filing same | 49 | 2 |
| Plaintiff's motion to strike defendant's pleas of the statute of limitations | 57 | 3 |
| Order granting motion for summary judgment | 64 | 9 |
| Proceedings in the Supreme Court of Georgia | 68 | 10 |
| Opinion, Duckworth, C.J. | 68 | 10 |
| Judgment | 70 | 12 |
| Order denying motion for rehearing | 76 | 12 |
| Notice of appeal to the Supreme Court of the United States | 77 | 13 |
| Clerk's certificate (omitted in printing) | 82 | 16 |
| Order noting probable jurisdiction | 83 | 16 |


RECORD PRESS, PRINTERS, NEW YORK, N. Y., MAY 24, 1966

BLANK

PAGE

[fol. 23]

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

Case No. A-82670

---

ROBERT D. WATKINS, Plaintiff,

v.

J. F. CONWAY, Defendant.

---

ORIGINAL PETITION—Filed October 5, 1960

TO THE SUPERIOR COURT OF SAID COUNTY:

The petition of Robert D. Watkins showeth that J. F. Conway, of said county, is indebted to your petitioner the sum of $25,000, besides interest, on a judgment obtained by your petitioner against the said J. F. Conway, in the Circuit Court of the 15th Judicial District, County of Palm Beach, State of Florida, held on the 5th day of October, 1955, as will fully appear by reference to an exemplification of the proceeding in said case; that the said judgment is unsatisfied, and that the said J. F. Conway neglects to pay the same; wherefore, your petitioner prays process may issue requiring the said J. F. Conway to file his answer in accordance with law. Wherefore petitioner prays for judgment in the amount of $25,000 plus interest and costs.

Potter Langbein & Burdick (205 Datura St., West Palm Beach, Fla.), Smith, Kilpatrick, Cody, Rogers & McClatchey, By Miles J. Alexander, Attorneys for Petitioner, 1045 Hurt Building, Atlanta 3, Georgia.

[File endorsement omitted]

1

[fol. 49]

IN THE SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO ANSWER AND ORDER FILING SAME—
February 1, 1965

Comes Now the defendant, J. F. Conway, in the above named and stated case, and with leave of Court first had and obtained, amends his answer heretofore filed by adding new paragraphs as follows:

3.

By way of further plea and answer, the defendant, J. F. Conway, in the above named and stated case, says that the right of action of the plaintiff on the cause sued upon as above set forth, if any he ever had, accrued more than five years next before the commencement of the above stated suit and that his right of action thereon, if any he ever had, is therefore barred by the statute of limitations.

4.

Defendant avers that the laws of this state provides that such a suit upon a foreign judgment shall be brought within five years after such judgment shall have been obtained.

5.

Defendant avers that the said suit was not filed until more than five years from the date of such foreign judgment and the same is therefore barred by the statute of limitations as set forth in Code Section 3-701 of the 1933 Code of Georgia as amended.

Martin McFarland, Attorney for Defendant J. F. Conway, 808 William-Oliver Building, Atlanta, Georgia 30303.

[fol. 50] *Duly sworn to by J. F. Conway, jurat omitted in printing.*

[fol. 51] ORDER

The within and foregoing Amendment is hereby allowed and ordered filed, subject to the objections and demurrers of the plaintiff.

This 1 day of February, 1965.

Virlyn B. Moore, Judge, Fulton Superior Court.

[File endorsement omitted]

Certificate of Service (omitted in printing).

---

[fol. 57]

IN THE SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S PLEAS OF THE STATUTE OF LIMITATIONS—Filed May 28, 1965

Now Comes Robert D. Watkins, plaintiff in the above-styled case and files this its motion to strike the plea of the statute of limitations filed by defendant on or about May 15, 1964, and also to strike the plea of the statute of limitations filed on or about February 1, 1965, and shows the following facts:

1.

On October 5, 1960, Robert D. Watkins, plaintiff, filed his petition in the Superior Court of Fulton County, Georgia, against J. F. Conway, as defendant, said petition being an action on a foreign (Florida) judgment.

2.

Defendant timely filed his answer and demurrers (both general and special) to said petition on December 21, 1960.

3.

Thereupon and before said demurrers were heard, the plaintiff did, on or about December 16, 1963, amend his petition.

4.

The amended petition alleged that said Florida judgment was obtained by plaintiff against defendant on October 5, 1955, [five (5) years and one (1) day before the filing of this suit].

[fol. 58]

5.

To said petition as amended, defendant did file timely demurrers, both general and special.

6.

Subsequently, on or about May 15, 1964, defendant purported to amend his answer by filing with the Clerk of the Superior Court his "Plea of the Statute of Limitations," setting out the five (5) year statute of limitations against foreign judgments, 1933 Code of Georgia §3-701. However, said "Plea" was never allowed and ordered filed by any judge of this Court; nor did the defendant attach to said "Plea" the affidavit required by Georgia Code §81-1310.

7.

Subsequently, on or about February 1, 1965, defendant amended his answer by filing with the Clerk of the Superior Court a plea of the statute of limitations, setting out the five (5) year statute of limitations against foreign judgments, 1933 Code of Georgia §3-701.

8.

By virtue of 1933 Code of Georgia §110-1001, as amended, 1955 Georgia Laws, p. 417, 418 and 1933 Code of Georgia §110-1002, a Georgia judgment remains enforceable for a

period of ten years without the requirement of any action on a plaintiff's part.

Wherefore, plaintiff moves the following:

1.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that the mere filing of an amendment, such as a "Plea of the Statute of Limitations" without an order allowing said amendment is not sufficient to constitute such purported amendment a part of the record of the case.

[fol. 59]

2.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that defendant did not attach thereto the affidavit required by Georgia Code §81-1310.

3.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

4.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken

and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

[fol. 60] 5.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

6.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, is void and unconstitutional, being in violation of Article IV, Section 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute, wherein a Georgia judgment obtained on the same date as plaintiff's would still be enforceable. Thus, the effect of said statute is to deprive plaintiff of the full faith and credit guaranteed foreign judgments by the United States Constitution.

7.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judg-
[fol. 61] ment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

8.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant, as applied to plaintiff, is void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judgment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

9.

Plaintiff moves that defendant's "Plea of the Statute of Limitations" (filed on or about May 15, 1964) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant is

void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judgment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

[fol. 62] 10.

Plaintiff moves that defendant's plea of the statute of limitations (filed on or about February 1, 1965) be stricken and dismissed on the grounds that 1933 Code of Georgia §3-701, the statute of limitations relied on by defendant is void and unconstitutional, being in violation of the equal protection clause of Amendment XIV of the United States Constitution, in that plaintiff's judgment is barred by said statute, whereas a Georgia judgment obtained on the same date would be enforceable; thus the effect of said statute is to deprive plaintiff of the equal protection of the laws of the State of Georgia, in that he, as a holder of a foreign judgment, is discriminated against in favor of holders of Georgia judgments.

Wherefore, plaintiff prays that its motion be inquired into, and that defendant's "Plea of the Statute of Limitations" filed on or about May 15, 1964, be stricken and that defendant's plea of the statute of limitations filed on or about February 1, 1965, be stricken.

Kilpatrick, Cody, Rogers, McClatchey & Regenstein, William G. Vance, Attorneys for Plaintiff, 1045 Hurt Building, Atlanta, Georgia 30303, JAckson 2-7420.

[File endorsement omitted]

[fol. 63] Certificate of Service (omitted in printing).

[fol. 64]

IN THE SUPERIOR COURT OF FULTON COUNTY

Case No. A-82670

---

ROBERT D. WATKINS, Plaintiff,

vs.

J. F. CONWAY, Defendant.

---

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT —June 1, 1965

The Motion for Summary Judgment filed by defendant on the 19th day of February, 1965, and plaintiff's Motion to Strike defendant's Plea of the Statute of Limitations coming on regularly to be heard, and after hearing from counsel for plaintiff and defendant, and it appearing to the Court that the defendant has withdrawn the plea to the statute of limitations filed on May 18, 1964, leaving filed of record the amended answer and plea to the statute of limitations ordered filed of record on February 1, 1965, and filed of record on February 1, 1965, and it further appearing to the Court that the sole question to be determined is the constitutionality of Georgia Code §3-701 as raised by defendant's Motion for Summary Judgment and plaintiff's Motion to Strike defendant's Plea of the Statute of Limitations, and it appearing to the Court that plaintiff's amended petition shows on its face that the said Florida judgment was obtained by the plaintiff and against the defendant on October 5, 1955 (5 years and 1 day before the filing of this suit, Case A-82670 Fulton Superior Court) and that said period of limitation had run,

Now Therefore, after consideration, it is hereby ordered and adjudged as follows, to-wit:

[fol. 65] (1) The Motion for Summary Judgment filed by defendant on February 19, 1965, is hereby granted on the grounds that the statute of limitations provided by Georgia Code §3-701 has run and that Georgia Code §3-701 is hereby declared constitutional; and

(2) Plaintiff's Motion to Strike filed May 28, 1965, is hereby denied, it being found that Georgia Code §3-701 neither violates Article IV, Section I, (full faith and credit clause) of the United States Constitution nor Amendment XIV of the United States Constitution.

This 1st day of June, 1965.

Virlyn B. Moore, Judge, Atlanta Judicial Circuit.

[File endorsement omitted]

---

[fol. 68]

IN THE SUPREME COURT OF GEORGIA

September Term, 1965

108

23070

---

WATKINS

v.

CONWAY

---

OPINION—September 22, 1965

Duckworth, Chief Justice. 1. Full faith and credit as required by the Constitution, Art. IV, Sec. I (Code § 1-401), is not denied foreign judgments by the provision of Code § 3-701, which is: "All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained." 50 CJS, 448 § 873,

and cases cited; Metcalf v. Watertown, 132 U. S. 671 (14 SC 947, 38 LE 861); Great Western Tel. Co. v. Purdy, 162 U. S. 329 (16 SC 810, 40 LE 986).

[fol. 69] 2. Nor is equal protection required by the 14th Amendment (Code § 1-815) denied such judgments because domestic judgments are made valid for seven years (Code Ann. § 110-1001; Ga. L. 1955, pp. 417, 418), and may be revived during dormancy of three years from 7 to 10 years after rendition. Code §§ 110-1002, 110-1003. This law refers solely to enforceability and is unrelated to suits of any kind.

3. We know of no statutory law of this State dealing with suits on domestic judgments, and none has been cited by counsel for plaintiffs in error. Therefore when the legislature dealt with foreign judgments in Code § 3-701 it was dealing with the named class, "foreign judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Code Ann. § 110-1001, supra.

4. Therefore, the plea of the limitations of Code § 3-701 to this suit on a Florida judgment which was instituted more than five years after the date of that judgment was valid, and the court did not err in sustaining the same and dismissing the suit based upon the Florida judgment.

Judgment affirmed. All the Justices concur except Mobley, J., not participating for providential cause.

[fol. 70]

IN THE SUPREME COURT OF GEORGIA

JUDGMENT—September 22, 1965

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

---

ROBERT D. WATKINS,

v.

J. F. CONWAY.

---

This case came before this court upon a writ of error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Mobley, J., not participating for providential cause.

---

[fol. 76]

IN THE SUPREME COURT OF GEORGIA

ORDER DENYING MOTION FOR REHEARING—
October 7, 1965

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

---

ROBERT D. WATKINS,

v.

J. F. CONWAY.

---

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Mobley, J., not participating for providential cause.

[fol. 77]

IN THE SUPREME COURT OF THE STATE OF GEORGIA

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed November 29, 1965

I. Notice is hereby given that Robert D. Watkins, the appellant above named, hereby appeals to the Supreme Court of the United States from the final judgment of the Georgia Supreme Court, entered in this action on September 22, 1965, dismissing plaintiff's suit on a foreign judgment.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The original petition, including process issuing thereon, in the case of Robert D. Watkins v. J. F. Conway, No. A-82670, Fulton Superior Court, filed October 5, 1960. (R. pp. 1-2).

2. The demurrers of the defendant, J. F. Conway, filed in the Fulton Superior Court on December 21, 1960, together with Certificate of Service thereon. (R. pp. 3-4).

[fol. 78] 3. The amendment to plaintiff's petition, filed on or about, December 16, 1963, together with the Order of Court thereon dated December 16, 1963, and Certificate of Service thereon. (R. pp. 5-18).

4. The demurrers of the defendant to the petition as amended filed on December 19, 1963, together with Certificate of Service thereon. (R. pp. 19-21).

5. The order and judgment of Judge Stonewall Dyer of the Fulton Superior Court, dated January 31,

1964, sustaining defendant's general demurrer. (R. p. 22).

6. The decision of the Court of Appeals (110 Ga. App. 96) reversing the ruling of Judge Dyer and overruling the general demurrer. (R. pp. 23-26).

7. The amended answer and plea of the statute of limitations of defendant filed on February 1, 1965, together with Order of Court thereon dated February 1, 1965, together with Certificate of Service thereon. (R. pp. 27-29).

8. Defendant's Motion for Summary Judgment, filed on February 19, 1965, together with Certificate of Service thereon. (R. pp. 30-34).

9. Plaintiff's Motion to Strike Defendant's Plea of the Statute of Limitations filed May 28, 1965, together with Certificate of Service thereon. (R. pp. 35-41).

10. The Order of Judge Virlyn B. Moore of the Fulton Superior Court, dated June 1, 1965, granting defendant's Motion for Summary Judgment, and denying plaintiff's Motion to Strike Defendant's Plea of the Statute of Limitations. (R. pp. 42-43).

11. Plaintiff's Bill of Exceptions to the June 1, 1965, order of Judge Virlyn B. Moore, filed June 18, 1965, [fol. 79] together with the Certificate of Judge Moore, and the Acknowledgment of Service.

12. The opinion of the Supreme Court of Georgia, dated September 22, 1965, affirming the decision of the trial court, and dismissing this action.

13. The judgment of the Supreme Court of Georgia, dated September 22, 1965, affirming the decision of the trial court and dismissing this action.

14. Plaintiff's Motion for Rehearing filed September 30, 1965.

15. The Order of the Supreme Court, dated October 7, 1965, denying plaintiff's Motion for Rehearing.

III. The following questions are presented by this appeal:

1. Plaintiff having filed suit in Georgia on a Florida judgment five (5) years and one (1) day after its rendition, is the full faith and credit guaranteed foreign judgments by Article IV, Section 1, of the United States Constitution denied Plaintiff by a Georgia statute of limitations against foreign judgments (Ga. Code §3-701), where the period of enforceability of a foreign judgment is limited to five (5) years by said statute of limitations, while domestic (Georgia) judgments are enforceable under Georgia law for a period of ten (10) years, before lapsing? Otherwise stated, is Ga. Code §3-701 as applied to plaintiff, void and unconstitutional, being in violation of Article IV, Section [fol. 80] 1, of the United States Constitution, in that plaintiff's foreign judgment is barred by said statute whereas a Georgia judgment obtained on the same date as plaintiff's would still be enforceable?

2. Plaintiff having filed suit in Georgia on a Florida judgment five (5) years and one (1) day after its rendition, is the equal protection of the laws guaranteed by Amendment XIV, Section 1, of the United States Constitution denied plaintiff by a Georgia statute of limitations against foreign judgments (Ga. Code §3-701), where the period of enforceability of a foreign judgment is limited to five (5) years by said statute of limitations, while domestic (Georgia) judgments are enforceable under Georgia law for a period of ten (10) years, before lapsing? Otherwise stated, is Ga. Code §3-701 unconstitutional because said statute has the effect of depriving plaintiff of the equal protection of the laws of Georgia, in that he, as a holder of a foreign judgment, is discriminated against because he has

a shorter period of time in which to enforce his judgment than a similarly situated holder of a Georgia judgment?

Kilpatrick, Cody, Rogers, McClatchey & Regenstein,

By: William G. Vance, G. Kimbrough Taylor, Jr.,

Emmet J. Bondurant, 1045 Hurt Building, Atlanta, Georgia 30303, JAckson 2-7420.

[fol. 81] Proof of Service (omitted in printing).

[fol. 81a]

[File endorsement omitted]

[fol. 82] Clerk's Certificate to foregoing Transcript (omitted in printing).

---

[fol. 83]

SUPREME COURT OF THE UNITED STATES

No. 954—October Term, 1965

---

ROBERT D. WATKINS, Appellant,

v.

J. F. CONWAY.

---

ORDER NOTING PROBABLE JURISDICTION—March 21, 1966

Appeal from the Supreme Court of the State of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

March 21, 1966

BLANK

PAGE

BLANK

PAGE

LIBRARY
SUPREME COURT

No. 65

Office Supreme Court, U.S.
FILED
JAN 26 1966
JOHN F. DAVIS, CLERK

IN THE 1966

# Supreme Court of the United States

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

---

On Appeal from the Supreme Court of the State of Georgia.

---

## JURISDICTIONAL STATEMENT.

---

EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.,
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

Of Counsel:
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303

Of Counsel:
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770
West Palm Beach, Florida 33402

BLANK

PAGE

## INDEX


| | Page |
|---|---|
| Introduction | 1 |
| Opinion below | 1 |
| Basis of jurisdiction | 2 |
| Questions presented | 3 |
| Statement of the case | 3 |
| Substantial federal questions are presented | 5 |
| Conclusion | 27 |
| Proof of service | 28 |
| Appendix A — Opinion of the court below | 29 |
| Appendix B — Judgment of the court below | 30 |


### Cases Cited


*Christmas* v. *Russell*, 72 U.S. (5 Wall.) 290 (1866) ... 10

*Douglas* v. *New York, N.H. & H. R.R.*, 279 U.S. 377 (1929) ... 16

*Easterlin* v. *New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902) ... 5

*Fauntleroy* v. *Lum*, 210 U.S. 230 (1908) ... 6

*Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896) ... 11

*Hughes* v. *Fetter*, 341 U.S. 609 (1951) ... 21

*Kenney* v. *Supreme Lodge of the World*, 252 U.S. 411 (1920) ... 10

*Kentucky Fin. Corp.* v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923) ... 22

*Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816) ... 2

**Cases Cited (Continued)**

Page

*McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934) . . 16

*M'Elmoyle* v. *Cohen*, 38 U.S. (13 Pet.) 312 (1839) . . 6, 8

*Metcalf* v. *City of Watertown*, 153 U.S. 671 (1894) . . 11, 17

*Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268 (1935) . . . . . 7, 19

*Mondou* v. *New York, N.H. & H. R.R.*, 223 U.S. 1 (1912) . . . . . 15

*Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927) . . . . . 24

*Roche* v. *McDonald*, 275 U.S. 449 (1928) . . . . . 7

*Testa* v. *Katt*, 330 U.S. 386 (1947) . . . . . 15

*Union Trust Co.* v. *Grossman*, 245 U.S. 412 (1918) . . . . 6

*Walters* v. *City of St. Louis*, 347 U.S. 231 (1954) . . . . . 20

*Waterman* v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887) . . . . . 17

*Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949) . . . . . 20

*Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) . . . . . 12, 13

**Constitutional Provisions and Statutes Cited**

Art. IV, § 1 United States Constitution . . . . . 2, 4, 13

Amend. XIV, § 1 United States Constitution . . . . . 2, 4

28 U.S.C. § 1257(2) . . . . . 2

28 U.S.C. § 1738 . . . . . 2, 4

Ga. Code § 3-701 (1933) . . . . . 3, 4, 5, 6, 18, 19, 21, 26

**Statutes Cited (Continued)**

Page

Ga. Code § 110-1001 (1933), as amended by 1955 Ga. Laws, pp. 417, 418 ..... 4, 5

Ga. Code § 110-1002 (1933) ..... 4, 5

**Miscellaneous**

CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963) ..... 27

Currie *The Constitution and the "Transitory" Cause of Action*, 73 *HARV. L. REV.* 36 (1959) ..... 22

BLANK

PAGE

No. . . . .

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT D. WATKINS,
Appellant,

versus

J. F. CONWAY,
Appellee.

---

On Appeal from the Supreme Court of the State of Georgia.

---

# JURISDICTIONAL STATEMENT

---

## INTRODUCTION

Appellant appeals from the judgment of the Supreme Court of the State of Georgia, entered in this action on September 22, 1965, dismissing appellant's suit on a Florida judgment, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial Federal question is presented.

## OPINION BELOW

The opinion of the Supreme Court of the State of Georgia is reported in *Watkins* v. *Conway*, 221 Ga. 374, 144 S.E.2d 721 (1965), and is attached hereto as Appendix A.

## BASIS OF JURISDICTION

This action was brought pursuant to 28 U.S.C. § 1738, and the common law of Georgia by Robert D. Watkins, appellant herein, to enforce a Florida judgment against J. F. Conway, appellee herein. Appellee defended on grounds that the five-year statute of limitations against foreign judgments, Ga. Code § 3-701, had run by one day, to which defense appellant interposed the objection that said statute was void and unconstitutional, in that it deprived appellant both of the guaranty of full faith and credit provided foreign judgments by Article IV, § 1, of the United States Constitution, and also, of the equal protection of the laws guaranteed by Amendment XIV, § 1, of the United States Constitution. Judgment of the Supreme Court of the State of Georgia, a copy of which is attached hereto as Appendix B, was dated and entered on September 22, 1965, affirming the trial court's decision that said statute was constitutional, and dismissing appellant's case. Motion for rehearing was filed by appellant on September 30, 1965, which motion the Georgia Supreme Court denied by order dated and entered October 7, 1965. Notice of appeal was filed in that court on November 29, 1965.

The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by 28 U.S.C. § 1257(2). The following decision sustains the jurisdiction of the United States Supreme Court to review on direct appeal the judgment in this case. *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

The statute, the validity of which is challenged by

appellant in this appeal is Ga. Code § 3-701 (1933), which provides:

> "Suits upon foreign judgments. — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

## QUESTIONS PRESENTED

I.

Whether consistently with the full faith and credit clause, Georgia may apply a five-year statute of limitations to bar the enforcement of a foreign judgment while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an additional period of five years?

II.

Whether under the equal protection clause Georgia may discriminate against judgments rendered in the courts of other states, solely on the basis of their foreign origin, by applying a shorter five-year statute of limitations to such judgments while permitting enforcement of Georgia judgments rendered at the same time under similar circumstances for an additional five-year period?

## STATEMENT OF CASE

On October 5, 1955, the appellant, Robert D. Watkins, obtained a judgment against appellee, J. F. Conway, in the Circuit Court of the 15th Judicial District of the

State of Florida. Thereafter, on October 5, 1960, five years and one day after the entry of this judgment, the appellant brought suit against appellee on this Florida judgment in the Superior Court of Fulton County, Georgia, pursuant to 28 U.S.C. § 1738 and the common law of Georgia. The action was barred by a five-year statute of limitations which Georgia imposes upon all suits upon foreign judgments [Ga. Code § 3-701 (1933)], although a Georgia judgment obtained on the same date would have continued to have been enforceable under Ga. Code § 110-1001, and § 110-1002.

The appellee pleaded the five-year statute of limitations prescribed by Ga. Code § 3-701 (1933). (R. pp. 49-50). Appellant moved to strike the plea of the statute of limitations on grounds that Ga. Code § 3-701 was unconstitutional and void, since it sought to discriminate against foreign judgments by denying enforcement under circumstances in which enforcement of a Georgia judgment would be permitted, and, therefore, violated the full faith and credit clause (Art. IV, § 1, U. S. Const.) and the equal protection clause (Amend. XIV, § 1, U. S. Const.) of the Constitution. (R. pp. 57-63). On June 1, 1965, the Superior Court of Fulton County granted appellee's motion for summary judgment on the sole ground that the Florida Judgment was barred by the five-year statute of limitations of Ga. Code § 3-701, which the court found to be constitutional. (R. pp. 64-65). Appellant's motion to strike was denied. (R. pp. 64-65).

The appellant took a timely appeal to the Supreme Court of Georgia urging the unconstitutionality of the application of the five-year statute of limitations to bar the enforcement of the Florida judgment. (R.

pp. 10-11). On September 22, 1965, after oral argument, the Supreme Court of Georgia affirmed the decision of the trial court upholding the constitutionality of the statute. (R. pp. 68-69). Although the Georgia Supreme Court recognized that the effect of its decision was to deny enforcement of appellant's Florida judgment under circumstances in which a Georgia judgment obtained at the same time would have been enforced, the court, nevertheless, held that the shorter period of limitations violated neither the full faith and credit clause nor the equal protection clause of the Constitution. Appellant's motion for rehearing was denied without opinion on October 7, 1965.

## SUBSTANTIAL FEDERAL QUESTIONS ARE PRESENTED

Under Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418, and Ga. Code § 110-1002 (1933), a Georgia judgment remains enforceable for a period of ten years without the requirement of any action on the plaintiff's part.[1] But by virtue of the statute in question, Ga. Code § 3-701 (1933), a foreign judgment becomes unenforceable after five years. It is clear, therefore, that the State of Georgia has discriminated *against foreign judgments* in favor of its own judgments. It is appellant's contention that such *discrimi-*

[1] If within seven years the holder of the Georgia domestic judgment merely issues an execution (attempts to levy) upon the judgment, and records the execution upon the general execution docket, the judgment will be renewed for another seven years, and this process may be repeated indefinitely. Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418. See *Easterlin v. New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902). If no action is taken within seven years, then the domestic judgment becomes dormant, but the holder may revive it by bringing suit on said judgment within three years. Ga. Code § 110-1002 (1933).

*nation* deprives him both of the full faith and credit guaranteed foreign judgments and also of the equal protection of the laws to which he is entitled under the Constitution of the United States.

### A. Georgia Code § 3-701 (1933), which Provides a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Violates the Guaranty Provided Foreign Judgments by the Full Faith and Credit Clause of the Constitution.

The appellant does not question the right of a state to apply a statute of limitations to foreign judgments [*M'Elmoyle* v. *Cohen,* 38 U.S. (13 Pet.) 312 (1839)], so long as it does so evenhandedly without discrimination. However, the full faith and credit clause does prohibit a state from discriminating against judgments rendered by the courts of sister states by imposing a shorter period of enforceability to foreign judgments than is applicable to domestic judgments rendered at the same time under similar circumstances.

It is well established that a state may, for reasons of public policy, close its courts to *suits on causes of action* which the state deems contrary to its public policy. *Union Trust Co.* v. *Grossman,* 245 U.S. 412 (1918). However, the policy of the full faith and credit clause is much stronger with reference to *judgments.* A forum state may not refuse to enforce a judgment validly rendered by the courts of a sister state even though the judgment is based on a cause of action which the plaintiff was absolutely prohibited from maintaining in the forum. Thus, in *Fauntleroy* v. *Lum,* 210 U.S. 230 (1908); the Mississippi Supreme Court re-

fused to enforce a Missouri judgment under the full faith and credit clause, because the Missouri judgment was based on a gambling claim, which gambling had taken place exclusively in Mississippi, between residents of that state, and which was in violation of laws embodying the public policy of Mississippi. A suit based on gambling could not be maintained in Mississippi in the first instance. Mississippi refused to enforce the judgment on the grounds that its own courts had no authority to enforce the underlying transaction. Holding the enforcement of the Missouri judgment to be required by the full faith and credit clause, this Court said at 237:

> "A judgment is conclusive as to all the *media concludendi* . . . and it needs no authority to show that it cannot be impeached either in or out of the state by showing that it was based upon a mistake of law. . . . [T]he judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law."

Compare *Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268 (1935). Similarly in *Roche* v. *McDonald*, 275 U.S. 449, 451-52 (1928), this Court stated:

> "It is settled by repeated decisions of this Court that *the full faith and credit clause of the Constitution requires that the judgment of a State court* which had jurisdiction of the parties and the subject-matter in suit, *shall be given in the courts of every other State the same credit, validity and effect which it has in the State where it was rendered, and be equal-*

> *ly conclusive upon the merits, and that only such defenses as would be good to a suit thereon in that State can be relied on in the courts of any other State.*" (Emphasis added)

Thus, it can be seen that the full faith and credit clause requires the State of Georgia to give the *same effect* to a Florida judgment, that the State of Florida itself would give.

However, as stated previously, the State of Georgia can apply a reasonable statute of limitations to foreign judgments, as long as it applies the same period of limitations to the enforcement of its own judgments. Otherwise stated, the State of Georgia may apply a statute of limitations on foreign judgments if and only if the statute of limitations would not discriminate in favor of Georgia judgments — that is, only if Georgia judgments are not allowed to be enforced for a longer period of time than foreign judgments. Thus, in *M'Elmoyle* v. *Cohen,* 38 U.S. (13 Pet.) 312 (1839), this Court held that the forum state (Georgia) might apply its own statute of limitations to a foreign judgment. The Court based its holding on the reasoning *that the statute of limitations was a plea to the remedy, not to the merits of the cause of action,* and consequently, would bar the cause.[2] The Court's rationale was that the

---

[2]This case involved substantially the same Georgia statute (prior to minor amendments) involved in the instant case. However, the only argument presented in that case was the right of Georgia to prescribe any limitation at all upon the right of the holder of a foreign judgment to sue in Georgia courts. Plaintiff argued that the State of Georgia had no right to place *any* limitation upon the enforcement of foreign judgments, and this argument was rejected. In rebutting this argument, both defendant and the Court noted (in dicta) that the

forum state may legislate limitations upon the remedy, (i.e., procedural limitations), although it could not legislate any limitations upon the merits of the foreign judgment. The Court stated at 328:

> "[T]here is no direct constitutional inhibition upon the States, nor any clause in the Constitution from which it can be even plausibly inferred that the States may not legislate upon the remedy in suits upon the judgments of other States, exclusive of all interference with their merits. . . .
>
> [T]he effect intended to be given under our Constitution to judgments [of other states] is that they are conclusive only as regards the merits. . . ."

Subsequent cases have upheld the viewpoint that states may, consistent with full faith and credit, legislate upon the remedy in regard to the enforcement of foreign judgments and causes of action, but only if the foreign judgment or cause of action is not discriminated against. Where such discrimination exists the guaranty of full faith and credit is violated.

---

State of Georgia had the power to place a limitation upon the period of enforcement of its own judgments, and consequently, should have the power to place a limitation upon foreign judgments. While this Court was aware of differences in the two time periods of limitation, the issue of discrimination was not presented to or examined by the Court; therefore, it is clear that *M'Elmoyle* only holds that the State of Georgia can apply a reasonable statute of limitations against foreign judgments. It is submitted that the authorities hereinafter discussed clearly demonstrate that such a limitation is unreasonable and a denial of full faith and credit where a longer period is proscribed for domestic judgments.

For example, in *Kenney* v. *Supreme Lodge of the World,* 252 U.S. 411 (1920), the Supreme Court held that a state statute prohibiting actions for death occurring in other states, construed as depriving the courts of the state of jurisdiction of an action on a judgment obtained in another state on a cause of action for death, violated the full faith and credit clause of the United States Constitution. It was argued that since the statute merely withdrew jurisdiction from the former court to entertain suits on foreign judgments, *and since thus the statute merely affected the remedy and not the right,* the statute was not in violation of the full faith and credit clause. In rejecting this argument the Court stated at 414-15:

> "Moreover, no doubt there is truth in the proposition that the Constitution does not require the State to furnish a Court. But it is also true that there are limits to the power of exclusion. . . . [*I*]*t is plain that a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to Courts otherwise competent.*" (Emphasis added)

And in *Christmas* v. *Russell,* 72 U.S. (5 Wall.) 290 (1866), a Mississippi statute provided that where the cause of action which led to the judgment was not barred by the Mississippi statute of limitations on the cause of action, the judgment would be enforced; but if the cause of action would have been barred in the Mississippi tribunals, under her statute, then the suit on the judgment would also be barred. It was held that under the full faith and credit clause, Mississippi had no power to enforce such a statute of limitations. Ob-

viously, the statute of limitations in that case discriminated in favor of judgments based on causes of action which would not have been barred by the Mississippi statute of limitations on the said cause of action. Judgments based on causes of actions which would not have been barred by the Mississippi statute of limitations on causes of actions were favored. Thus, a state may not place a limitation on the remedy (such as a statute of limitations), where that limitation operates in a discriminatory manner in favor of its own interests.

In the case of *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896) (one of the two cases cited by the Georgia Supreme Court[3]), there was some question as to whether plaintiff was suing on a contract or on a foreign judgment recovered by reason of that contract. This Court, after some discussion, decided plaintiff had to be suing on contract since the foreign judgment was invalid by reason of failure of service. This Court then went on to hold that the suit was barred by the forum state's statute of limitations. It was stated at 339:

> "The limitation of actions is governed by the *lex fori*, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing in other jurisdictions. . . .
>
> "*Neither the statutes nor the decisions of*

[3]The other case, *Metcalf* v. *City of Watertown*, is discussed *infra* at footnote 4, and also supports appellant's contention.

> *the state of Iowa [the forum state] upon this subject have made any discrimination against the citizens, the contracts, or the judgments of other states, or against any right asserted under the constitution or laws of the United States. The case is thus distinguished from Christmas v. Russell, 5 Wall. 290, cited at the bar.*" [Discrimination against certain specific foreign judgments held unconstitutional.] (Emphasis added)

Thus, in this case it was impliedly recognized that if there had been discrimination involved — that is, if the statute of limitations applied against foreign causes of action or judgments had been for a shorter period than the statute of limitations against local causes of action or judgments — such a statute of limitations would be unconstitutional.

It is submitted that the two cases of *Hughes* v. *Fetter*, 341 U.S. 609 (1951) and *Wells v. Simonds Abrasive Co.*, 345 U.S. 514 (1953), read together, emphatically demand a finding that full faith and credit has been denied in the instant case. In *Hughes* v. *Fetter*, 341 U.S. 609 (1951), plaintiff, basing his complaint on an Illinois wrongful death statute, brought an action in a Wisconsin State court to recover damages for the death of a man who was fatally injured in an automobile accident in Illinois. The trial court in Wisconsin held that a Wisconsin statute, which created a right of action only for deaths in that state, established a local policy against Wisconsin's entertaining suits brought under the wrongful death acts of other states and dismissed the action. The Wisconsin Supreme Court affirmed, notwithstanding the contention

that the local statute so construed violated the full faith and credit clause of Article IV, § 1 of the Constitution. This Court stated at 611:

> "We are called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrongful death act. . . . It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent."

The Court went on to hold that Wisconsin was under an obligation to enforce the out-of-state wrongful death cause of action. It was ruled that Wisconsin had no strong policy against wrongful death actions as evidenced by the fact that it allowed an action for wrongful death occurring in Wisconsin, and that consequently, the full faith and credit clause required Wisconsin to enforce the out-of-state cause of action.

Then, in *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) suit was brought in Pennsylvania for a wrongful death action occurring and governed by the laws of Alabama. The Alabama statute of limitations was two years while the Pennsylvania statute of limitations was one year. The action was brought in less than two years, but after one year had passed. The District Court of Pennsylvania had applied the Pennsylvania statute of limitations and dismissed the action. The plaintiff relied on the *Hughes* case, stating that under this case the forum state was required

to enforce an out-of-state wrongful death action. The Court citing *M'Elmoyle* v. *Cohen*, stated that long ago it had held that applying the statute of limitations of the forum to a foreign substantive right did not deny full faith and credit; and it further noted at 517:

> "The rule that the limitations of the forum apply (which this Court has said meets the requirements of full faith and credit) is the usual conflicts rule of the states. . . .
>
> ". . . Our prevailing rule is that the Full Faith and Credit Clause does not compel the forum state to use the period of limitation of a foreign state."

This Court goes on to say, however, at 518:

> "Our decisions in Hughes v. Fetter . . . and First National Bank v. United Air Lines . . . do not call for a change in the well-established rule that the forum state is permitted to apply its own period of limitation. *The crucial factor in those two cases was that the forum laid an uneven hand on causes of action arising within and without the forum state. Causes of action arising in sister states were discriminated against. Here Pennsylvania applies her one-year limitation to all wrongful death actions wherever they may arise.*" (Emphasis added)

It is clear from the *Wells* case that statutes of limitation which discriminate against foreign causes of action or suits on foreign judgments are unconstitutional

under the full faith and credit clause. The state may certainly apply its own statute of limitations as to foreign judgments, but if it does so, it must not discriminate. It cannot give its own judgments a longer period of enforceability than it allows foreign judgments.

Although the requirements of the full faith and credit clause are admittedly less stringent with reference to causes of action than those applicable to judgments, *Hughes* and *Wells* definitely show that the full faith and credit clause, nevertheless, prohibits states from discriminating against *causes of action* arising under the laws of sister states. As it is clear under *Hughes* and *Wells* that a state may not discriminate against foreign causes of action, it necessarily follows that a state may not discriminate against foreign judgments under circumstances in which domestic judgments, rendered at the same time, would be enforced.

Analogous considerations have prohibited this Court from allowing discrimination against Federally created causes of action. A state may not refuse to enforce the laws of another sovereign while enforcing its own similar laws. Thus, while a state court, under the *supremacy clause* (as opposed to the full faith and credit clause) of the Constitution is obligated to enforce Federal law [*Testa* v. *Katt*, 330 U.S. 386 (1947)], on matters going *to the remedy* rather than the right, a state court is under no obligation to enforce Federal law as long as it does not discriminate between Federal law and state law. Consequently, *Mondou* v. *New York, N.H. & H. R.R.*, 223 U.S. 1 (1912), in accord with *Testa*, decided that jurisdiction of an

action to enforce the rights arising under the Federal Employers' Liability Act could not be declined by the courts of the state whose ordinary jurisdiction as prescribed by local laws was adequate to the occasion. In *Douglas* v. *New York, N.H. & H. R.R.*, 279 U.S. 377 (1929), however, the New York State courts had dismissed an action under the Federal Employers' Liability Act brought by a Connecticut resident against a Connecticut corporation based on an accident occurring in Connecticut. A New York statute permitted actions by non-residents against a foreign corporation only in certain classes of cases, of which this was not one. The Court held that New York was not obligated to enforce Federal law in this situation. State and Federal actions were treated equally. In *McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934), an Alabama statute had opened the doors of Alabama courts to suits against foreign corporations arising under the laws of other states. This statute superseded the previous rule of decision that no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action arose in Alabama. The Alabama Supreme Court had dismissed an action based on an out-of-state accident arising under the Federal Employers' Liability Act, holding that the statute lifted the trial bar only for causes of action arising under the laws of sister states. The defendant insisted that the statute as construed was consistent with the Federal Constitution since the state could determine the limits of the jurisdiction of its courts, *i.e.*, in effect, stating that Alabama could regulate the remedy. The Court states at 233-34:

> "While Congress has not attempted to compel states to provide courts for the enforce-

ment of the Federal Employers' Liability Act, Douglas v. New York, New Haven & Hartford R. R. Co. . . . the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. *The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced.* The plaintiff is cast out because he is suing to enforce a federal act. *A state may not discriminate against rights arising under federal laws."*[4] (Emphasis added)

---

[4]The Supreme Court of Georgia cited as authority for its ruling that the full faith and credit clause was not violated, the case of *Metcalf* v. *City of Watertown*, 153 U.S. 671, 14 Sup. Ct. 947 (1894). This case did not involve the applicability of the statute of limitations against foreign judgments. Rather it involved the questions of the constitutionality and the applicable period of limitation against judgments of Federal courts within the forum state. A Wisconsin statute was subject to some ambiguity as to whether judgments of Federal courts were prescribed by the same time period as judgments of the State courts of Wisconsin. There was a Wisconsin Supreme Court case, however, [*Waterman* v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887)] which held that a shorter period of limitations applied to the Federal courts. Notwithstanding this holding, the Court felt that if the Supreme Court of Wisconsin had been faced with this question again they would have decided otherwise. The Supreme Court cites some other Wisconsin authorities which are not directly on point to reinforce its position and then states at 681, 14 Sup. Ct. at 951:

> *"Moreover, it should be observed that the question of the power under the constitution to control in any way or to discriminate as to federal judgments rendered in the state does not seem to have been brought to the attention of the court [in Waterman], and was not adverted to."* (Emphasis added)

The Court further states at 683, 14 Sup. Ct. at 952:

> "We cannot attribute to the legislature of Wisconsin any design to discriminate against the judgments and decrees of the courts of the United States rendered in that state by reducing the statutory period for

By the same token, a state cannot discriminate against judgments taken in other states. Discrimination based merely on the source of the judgment is invalid. A plaintiff should not be defeated merely because he has taken his judgment in another state rather than in the forum state. Although a state has a power to control the remedy by such means as a statute of limitations, it cannot discriminate against judgments of other states in so doing.

It cannot be denied that the State of Georgia has discrimmated against foreign judgments. Following the *Hughes* and *Wells* cases and other authorities heretofore discussed, the conclusion is, therefore, inescapable that Ga. Code § 3-701 (1933) violates the full faith and credit clause.

> "The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

---

the commencement of actions thereon to a less number of years than obtained as to the judgments and decrees of the state courts. . . ."

It is clear from this decision that this Court felt forced to reinterpret a Wisconsin statute, and, in effect, overrule the Wisconsin Supreme Court's interpretation of its own statute, primarily on the basis that any other interpretation would be unconstitutional due to the fact that the other interpretation would effect discrimination against Federal judgments.

*Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268, 276-7 (1935). To allow the various states to discriminate against foreign judgments by imposing shorter periods of limitation would impair the very purpose and effectiveness of the full faith and credit clause. It is submitted that a substantial Federal question under the full faith and credit clause is presented to this Court, which question should be heard and resolved by this Court in favor of appellant.

**B. Georgia Code § 3-701 (1933), Which Provides a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Discriminates Against Those Suitors in Georgia Courts, Who Sue on Foreign Judgments, in Violation of the Equal Protection Clause of the 14th Amendment.**

The question of a forum state's refusal to enforce valid foreign judgments has, of course, been before this Court on countless occasions and the resolution of the questions presented in such cases has always been based upon the full faith and credit clause. The precise question presented in this petition has never been before this Court, and, since it involves the State's refusal to enforce a foreign judgment under circumstances when a domestic judgment could be enforced, the Court could, therefore, find substantial historical justification for basing its decision upon the full faith and credit clause. The obvious denial of full faith and credit practiced by Ga. Code § 3-701 (1933) upon holders of foreign judgments should not, however, preclude the Court from considering the applicability of the equal protection clause to the facts of this case.

It appears clear that the language of the equal protection clause — "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws" — clearly contemplates and condemns Georgia's refusal to enforce appellant's judgment when a similarly situated holder of a Georgia judgment would be allowed to enforce his judgment. This is undoubtedly a purposeful and systematic discrimination designed to favor one individual or class over another. *Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949). In order to justify such discrimination, the individuals or classes discriminated against must be the subject of a classification based upon reasonable differences between the favored and disfavored individuals or classes. See, *e.g.*, *Walters* v. *City of St. Louis*, 347 U.S. 231, 237 (1954). No such difference between petitioner and a similarly situated holder of a Georgia judgment has been suggested; certainly only the most fertile imagination could conjure up a reason for the classification found in the Georgia statute. Can justification for the uneven treatment be found in (1) the fact that petitioner holds a foreign rather than a domestic judgment and (2) the fact that petitioner must enforce his judgment by bringing an action in Georgia whereas the holder of a Georgia judgment could enforce simply by levy or other distraint? Certainly, as a practical matter, neither the source of the judgment nor the mode of its enforcement provide reasonable bases for the Georgia classification. In the full faith and credit area the source of the judgment is no reason for classification and it is correspondingly apparent that a discrimination based on the source of the judgment must also constitute a denial of equal protection of the laws. Similarly, the mode which must be employed to enforce the judg-

ment affords no real basis for the Georgia classification. Thus, it is clear that the classification is arbitrary, and the resulting discrimination, therefore, transgresses the equal protection clause.

Although it is vigorously submitted that Ga. Code § 3-701 (1933) violates the full faith and credit clause, appellant believes that the Georgia classification found therein also constitutes a basic and classic example of denial of equal protection of the laws. Indeed, Professor Currie, for one, finds such cases as *Hughes* v. *Fetter*, 341 U.S. 609 (1951) to be most appropriately considered as equal protection cases. He states in his analysis of *Hughes:*

> "The inescapable fact is that Wisconsin, in its wrongful-death statute, established a policy for the protection of Wisconsin residents generally, and then excluded from the protection of that policy a certain class of residents: those whose deaths resulted from injuries received elsewhere. Since no constitutionally tenable policy of the state relating either to the administration of its courts or to any of its other governmental concerns can be suggested which can justify this classification, the classification is arbitrary and capricious. The vice, therefore, of the state action in *Hughes* v. *Fetter* was that it denied to members of the disfavored class the equal protection of the laws. The reliance of the Supreme Court on the full-faith-and-credit clause was both unnecessary and confusing."

Currie, *The Constitution and the "Transitory" Cause of Action*, 73 *HARV. L. REV.* 36, 60-61 (1959). Doubtless, the reliance of the Court upon the full faith and credit clause in the *Hughes* decision has historical justification, but certainly the logic of constitutional theory would be advanced by recognizing that *Hughes* v. *Fetter* is based implicitly upon those concepts inherent in equal protection.

While there are no cases in which the enforcement of judgments has been keyed to the equal protection clause, this Court has in other situations indicated the peculiar applicability of the equal protection clause to the instant case. In *Kentucky Fin. Corp.* v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923), this Court reviewed and reversed a decision of the Supreme Court of Wisconsin. There, a Kentucky corporation brought an action of replevin in Wisconsin to recover an automobile unlawfully taken from its possession by a third person and sold to the defendant in Wisconsin. The plaintiff did no business in Wisconsin. Pursuant to Wisconsin statute, the defendant obtained an order requiring the plaintiff's secretary, who resided and was employed in Louisville, Kentucky, to appear in Milwaukee for pre-trial examination and to bring with him all relevant files and records. When the secretary, with the plaintiff's approval, refused to comply with the order, the complaint was stricken and the action was dismissed. Noting that the Wisconsin statute applied only to foreign corporations and that such an examination could not be ordered with respect to residents of Wisconsin, be they corporation or individual, or to non-resident individuals, the Court asserted:

"No doubt a corporation of one state seeking relief in the courts of another must conform to the prevailing modes of proceeding in those courts and submit to reasonable rules respecting the payment of costs or giving security therefor and the like . . . but it cannot be subjected, *merely because it is such* [foreign] *a corporation, to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations. Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin* — a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary. There could be no reason for requiring a corporate resident of Louisville to send its secretary, papers, files, and books to Milwaukee for the purposes of an adversary examination that would not apply equally to an individual resident of Louisville in a like case. The discrimination is further illustrated by the provision that as to all residents of Wisconsin, individual and corporate, the examination should be had in the county of their residence, no matter what its distance from the place of suit." (Emphasis added)

262 U.S. at 551.

As shown by the above quotation, the precise basis for the decision was that the statute discriminated arbitrarily against foreign corporations. Moreover, the case provides a complete analogy to the instant situa-

tion, where petitioner is denied the right to enforce his judgment in the Georgia courts, because it is a foreign judgment. To paraphrase, he cannot be subjected, simply because he is the holder of a *foreign* judgment "to onerous requirements having no reasonable support in that fact and not laid in other suitors in like situations."

Another of this Court's decisions also provides an analogy to the instant case: *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927). That was a personal injury action by the plaintiff against an Ohio corporation doing business in Arkansas where plaintiff's injury occurred. Defendant had complied with the Arkansas requirements to do business in that state and had designated an agent for service of process as well as a principal office. It did no business and had no officer or agent elsewhere in the state. Suit was filed by the plaintiff in a county other than the designated one which eventually resulted in a judgment for the plaintiff. The Arkansas venue statute allowed suit to be brought against a foreign corporation doing business in Arkansas in any county, but limited the venue of actions against domestic corporations to a county in which it had a place of business or in which its chief officer resided. Actions against individuals were required to be brought in the county where the individual resided or could be found.

This Court found that the Arkansas venue statute denied the foreign corporation equal protection of the laws because it was "very plain that the statutes discriminate against foreign corporations, and in favor of domestic corporations and individuals, and that

the discrimination is not theoretical merely, but real and substantial." 274 U.S. at 493. The Court reasoned:

> "No doubt there are subjects as to which corporations admissibly may be classified separately from individuals and accorded different treatment, and also subjects as to which foreign corporations may be classified separately from both individuals and domestic corporations and dealt with differently. But there are other subjects as to which such a course is not admissible; the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.
>
> "Here the separate classification of foreign corporations is in respect of the venue or place of bringing transitory actions. The statutes mean foreign corporations doing business within the state by her permission, and therefore having a fixed place of business therein and a resident agent on whom process may be served. We speak only of them. *So far as their situation has any pertinence to the venue of transitory actions, it is not distinguishable from that of domestic corporations and individuals. Certainly there is no substantial difference. The opinion of the state court does not point to any relevant distinction, nor have counsel suggested any. Of course the restricted venue as to domestic corporations and individuals is prompted by considerations of convenience and economy; but these considerations have equal application to foreign corporations. So far as*

*"the plaintiffs in such actions are affected, it is apparent that there is no more reason for a statewide venue when the action is against a foreign corporation than when it is against a domestic corporation or a natural person. So we conclude that the special classification and discriminatory treatment of foreign corporations are without reasonable basis and essentially arbitrary."* (Emphasis added)

274 U.S. at 493-94.

This reasoning is likewise applicable to the present case. There is no reason for discriminating against foreign judgments in favor of domestic judgments by granting a longer period of enforcement for the latter. The only basis for the classification which can be perceived is that the judgments are foreign rather than domestic, and this, of course, is no reason at all. It is then clear that the classification found in Ga. Code § 3-701 (1933) is arbitrary and constitutes a denial of equal protection of the laws guaranteed by the 14th Amendment to the Constitution.[5] It is submitted that a

---

[5]Although it can in truth be said that this portion of the application for an appeal lacks direct decisional support, this dearth of authority is perhaps best explained by Professor Currie:

"Conflict-of-laws cases in which the Equal Protection Clause has been a decisive factor have been rare indeed. Legislatures seldom enact laws for the sole benefit of local citizens or residents; courts are not disposed to interpret laws so as to give such effect. In part this may be true because the effect of the Equal Protection Clause is so clear; in greater part it seems a result of a distaste for discrimination, independent of constitutional prohibitions. It is fair to say that the traditional system of conflict of laws has tended to minimize cases of outright discrimination in the realm of

substantial Federal question under the equal protection clause is presented to this Court, which question should be heard and resolved by this Court in favor of appellant.

## CONCLUSION

The jurisdiction of the Supreme Court to review this case on appeal is clear and unquestionable. Appellant urges that the Supreme Court give plenary consideration to the case and permit briefs and oral argument on the merits.

Respectfully submitted,

EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

*Of Counsel:*
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303.

---

private law, thanks to its utilization of neutral and impersonal choice-of-law rules. It is difficult to cite cases in support of the elementary proposition that a law providing benefits for local citizens must in general provide the same benefits for nonresidents, including aliens, similarly situated."

*CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS*, 526, 541 (1963).

*Of Counsel:*
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770,
West Palm Beach, Florida 33402

**PROOF OF SERVICE**

Emmet J. Bondurant, attorney for Robert D. Watkins, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on this 19 day of January, 1966, I served a copy of the foregoing Jurisdictional Statement on the Appellee therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Martin McFarland, 898 William Oliver Building, Atlanta, Georgia, 30303.

Emmet J. Bondurant,
1045 Hurt Building,
Atlanta, Georgia 30303
Attorney for
Robert D. Watkins, Appellant

## APPENDIX A

## OPINION BELOW

Supreme Court of Georgia

Decided: September 22, 1965
September Term 1965
108

23070. WATKINS v. CONWAY.

DUCKWORTH, Chief Justice. 1. Full faith and credit as required by the Constitution, Art. IV, Sec. I (Code § 1-401), is not denied foreign judgments by the provision of Code § 3-701, which is: "All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained." 50 CJS, 448 § 873, and cases cited; Metcalf v. Watertown, 132 U. S. 671 (14 SC 947, 38 LE 861); Great Western Tel. Co. v. Purdy, 162 U. S. 329 (16 SC 810, 40 LE 986).

2. Nor is equal protection required by the 14th Amendment (Code § 1-815) denied such judgments because domestic judgments are made valid for seven years (Code Ann. § 110-1001; Ga. L. 1955, pp. 417, 418), and may be revived during dormancy of three years from 7 to 10 years after rendition. Code §§ 110-1002, 110-1003. This law refers solely to enforceability and is unrelated to suits of any kind.

3. We know of no statutory law of this State dealing with suits on domestic judgments, and none has been cited by counsel for plaintiffs in error. Therefore when the legislature dealt with foreign judgments in Code § 3-701 it was dealing with the named class, "foreign

judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Code Ann. § 110-1001, supra.

4. Therefore, the plea of the limitations of Code § 3-701 to this suit on a Florida judgment which was instituted more than five years after the date of that judgment was valid, and the court did not err in sustaining the same and dismissing the suit based upon the Florida judgment.

Judgment affirmed. All the Justices concur except Mobley J., not participating for providential cause.

---

## APPENDIX B

### JUDGMENT OF THE COURT BELOW

Supreme Court of Georgia,

Atlanta, September 22, 1965

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered:

Robert D. Watkins v. J. F. Conway.

This case came before this court upon a writ or error from the Superior Court of Fulton County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur except Mobley, J., not participating for providential cause.

BLANK

PAGE

BLANK

PAGE

BLANK

PAGE

## TABLE OF CONTENTS


| | Page |
|---|---|
| OPINIONS BELOW | 1 |
| JURISDICTION | 1 |
| QUESTION PRESENTED | 2 |
| STATEMENT OF THE CASE | 2 |
| ARGUMENT AND REASONS FOR AFFIRMING THE JUDGMENT | |
| A. THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL IN CHARACTER | 3 |
| B. THE DECISION IS CLEARLY CORRECT | 8 |
| CONCLUSION | 8 |
| APPENDIX A – JUDGMENT OF TRIAL COURT | 11 |
| APPENDIX B – DECISION OF THE SUPREME COURT OF GEORGIA | 13 |


**Cases:**


| | |
|---|---|
| Metcalf vs. Watertown, 153 U.S. 671 (14 S.C. 947, 38 L.E. 861) | 6 |
| Great Western Tel. Co. vs. Purdy, 162 U.S. 329 (16 S.C. 810, 40 L. Ed. 986) | 6 |
| Bacon vs. Howard, 20 How, 22, 15 L. Ed. 811 | 6 |
| Randolph vs. King, 20 F. Cas. No. 11,560, 2 Bond 104 | 6 |
| Schemmel vs. Cooksley, 256 Ill. 412, 100 N.E. 141 | 6 |
| Leathe vs. Thomas, 109 Ill. A. 434 (Aff. 216 Ill. 246, 75 N.E. 810, 4 Ann. Cas. 79) | 6 |

## TABLE OF CONTENTS—(Continued)


| | Page |
|---|---|
| Meek vs. Meek, 45 Iowa 294 | 6 |
| Taylor vs. Joor, 7 La. Ann. 272 | 6 |
| Little vs. McVey (Sup) 47 A. 61 | 6 |
| Napier vs. Gidiere, 17 S.C. Eq. 215, 40 Am. D. 613 | 6 |
| Pryor vs. Moore, 3 Tex. 250 | 6 |
| Tourtelot vs. Booker (Civ. A.) 160 N.W. 293 | 6 |
| G. E. Terry Ley, Trustee vs. C. L. Simmons, 249 S.W. 2d 808, 36 A. L. R. 2d 563 | 6 |
| Randolph vs. King, 1867 Z Bond, 104 Fed. Cas. No. 11,560 | 7 |
| Kelly vs. Heller, 222 Pac. 648 | 7 |
| Schemmel vs. Cooksley, 256 Ill. 412 | 7 |
| Meek vs. Meek, 45 Iowa 294 | 7 |
| McArthur vs. Goddin, 12 Bush 274 | 7 |
| Taylor vs. Joor, 7 La. Ann. 272 | 7 |
| Napier vs. Gidiere, 17 S. Car. 215 | 8 |
| Estes vs. Nyle, 1838 Meigs 34 (Antedating M'elmoyle vs. Cohen, U.S. Supra) | 8 |
| Fields vs. Munday, 106 Wis. 383 | 8 |
| Kuykendall vs. Tod, 219 F. 707, 135 C.C.A. 379 | 8 |
| Watkins vs. Conway | 1 |
| Jacobson vs. Massachusetts, 197 U.S. page 11 | 4 |
| Zucht vs. King, 260 U.S., pp. 174-176 | 4 |

## TABLE OF CONTENTS—(Continued).


Page

**Constitutional Provisions and Statutes Cited:**

Article IV, Section I, United States Constitution ..... 2

Amendment XIV, Section I, United States Constitution ..... 12

Georgia Code Section 3-701 (1933) ..... 3

Georgia Code Section 110-1001 (1933), as amended by 1955 Georgia Laws, pp. 417, 418 ..... 13

Georgia Code Section 110-1002 (1933) ..... 5

**Miscellaneous:**

50 C.J.S., Section 873, at page 448 ..... 5

34 C. J., page 1110, note 38 ..... 5

BLANK

PAGE

IN THE

# Supreme Court of the United States

No. 954

ROBERT D. WATKINS

Appellant.

vs.

J. F. CONWAY,

Appellee.

## MOTION TO AFFIRM

### OPINIONS BELOW

The opinion of the Trial Judge of the Atlanta Judicial Circuit is reprinted as "Appendix A" hereof. The decision of the Supreme Court of the State of Georgia is reported in the case of *Watkins vs. Conway*, 221 Georgia Reports, page 374, 144 S.E. 2d. page 721 (1965), and is reprinted herein as "Appendix B" hereof.

### JURISDICTION

Although the validity of *Georgia Code Section* 3-701 has been formally drawn into question, Appellee con-

tends that the two questions are not substantial in character and have been previously ruled upon. The appeal should be dismissed. The Law is settled.

## QUESTION PRESENTED

It is contended by the Appellee that the questions presented by the Appellant are ambiguous, cumbersome and argumentative.

Appellee contends that the two questions succinctly stated would be as follows:

(1) Is Full Faith and Credit as required by the Constitution, Article IV, Section I (*Georgia Code Section* 1-401) denied foreign judgments by the provision of *Georgia Code Section* 3-701, which is:

> "All suits upon judgments obtained out of this State shall be brought within five years after such judgment shall have been obtained."

(2) Is equal protection as required by the Fourteenth Amendment of the Constitution, (*Georgia Code Section* 1-815) denied such foreign judgment because domestic judgments are made valid for seven years and may be revived during dormancy for an additional three years.

## STATEMENT OF THE CASE

The Appellant, ROBERT D. WATKINS, filed a personal injury suit against the Appellee and one Charlie Ben Jones, in the Fifteenth Judicial Circuit of Florida, seeking damages. The Appellant's petition as amended, alleges that a verdict was rendered in favor of the Appellant on October 6, 1952. That judgment was entered on said verdict some three years later, viz., October 5, 1955.

hat thereafter on October 5, 1960, five years and one y after the entry of said judgment, the Appellant ought suit against the Appellee on the Florida judg- ent in the Superior Court of Fulton County, Georgia.

The Appellee defensively pled the Statute of Limita- ns, embracing the following Code Section:

Code Section (Georgia) 3-701:

"Suits upon foreign judgments — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

Thereafter, the Superior Court of Fulton County, eorgia, on or about June 1, 1965, after a hearing and gument of all counsel for parties litigant, did grant ppellee's Motion For Summary Judgment on the ound that it was barred by the Statute of Limitations Georgia, *Code Section* 3-701, as above quoted.

The Appellant timely appealed the ruling of Fulton perior Court to the Supreme Court of the State of eorgia. On September 22, 1965, after oral argument by unsel for litigant parties, the Supreme Court of Geor- affirmed the decision of the Trial Court, upholding e constitutionality of said Code Section, and adjudging at the said Code Section neither violated the Full Faith d Credit clause, nor the equal protection clause of the nstitution. Appellant's Motion For Rehearing was nied on October 7, 1965.

## THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL IN CHARACTER

A. It is urged by the Appellee that the two questions not substantial and this motion to affirm should be tained.

B. As was stated by this Court in the case of *Jacobson vs. Massachusetts*, 197 U. S., page 11, the Court dismissed the appeal saying:

> "Although the validity of a law was formally drawn in question, it is our duty to decline jurisdiction whenever it appears that the constitutional question presented is not . . . substantial in character."

C. This Court, in *Zucht vs. King*, 260 U. S., pages 174-176, found jurisdiction lacking, since the question presented was not one of substance either frivolous or already settled. It is submitted that the questions presented have been settled.

Actually, the Appellant, being a resident of the State of Florida, and under its jurisdiction, it is noteworthy that the State of Florida itself provides: *Title* 95 of the *Code of the State of Florida*:

(1) A statute of limitations on its domestic judgments of twenty years.

(2) A statute of limitations on foreign judgments sued in that State of seven years.

It is well recognized that in the State of Georgia, that the limitation on its domestic judgments is seven years, *Code Section* 110-1001, and may be revived by a Writ of Scire Facias for an additional period of three years, *Code Section* 110-1002.

In dealing with the two questions presented, we desire to cite to the Court the following:

*Code Section* 3-701 provides:

> "Suits Upon Foreign Judgments — All suits upon judgments obtained out of the State shall be

brought within five years after such judgment shall have been obtained. (*Acts* 1805, *Cobb*, 564, *Acts* 1855-6, page 234)"

The sole question for determination by this Court is whether or not the above quoted statute is constitutional or unconstitutional.

It is strongly urged by the Appellee that the above quoted statute is constitutional.

It is well recognized in the State of Georgia that the limitation on a domestic judgment in the State of Georgia is seven years (*Code Section* 110-1001) and may be revived for an additional period of three years by Writ of Scire Facias (*Code Section* 110-1002). *Code Section* 3-701, which is under attack on the grounds of being unconstitutional, providing a statute of limitation on foreign judgments of five years.

In dealing with the question as to whether or not *Georgia Code Section* 3-701 is constitutional, reference is made to the following citations and principles of law:

*50 Corpus Juris Secundum*, Section 873, page 448 provides:

> "The constitutional provision requiring 'full faith and credit' to be given to the judgments of other states is not violated by a statute imposing a reasonable period of limitation on the bringing of suits on such judgments." Citing *Kelly vs. Heller*, 222 Pacific, page 648; 74 Colorado, page 470; and *Bosich vs. Skemitti*, 112 Southern, page 365; 146 Mississippi, page 491; 52 A. L. R., page 564; 34 *Corpus Juris*, page 1110, note 44.

It has been held that the constitutional provision requiring "full faith and credit" to be given to the judg-

ments of other states is not violated by the statute imposing the reasonable period of limitation upon the bringing of suit on such judgments:

U. S. — *Bacon vs. Howard,* 20 How. 22, 15 L. Ed. 811; *Randolph vs. King,* 20 F. Cas. No. 11,560; 2 Bond, 104.

Ill. — *Schemmel vs. Cooksley,* 256 Ill. 412, 100 N.E. 141; *Leathe vs. Thomas,* 109 Ill. A. 434 (Aff. 218 Ill. 246, 75 N.E. 810, 4 Ann. Cas. 79).

Iowa — *Meek vs. Meek,* 45 Iowa 294.

La. — *Taylor vs. Joor,* 7 La. Ann. 272.

N. J. — *Little vs. McVey,* (Sup.) 46 A. 61.

S. C. — *Napier vs. Gidiere,* 17 S.C. Eq. 215, 40 Am D. 613.

Tex. — *Pryor vs. Moore,* 8 Tex. 250; *Tourtelot vs. Booker,* (Civ. A.) 160 N.W. 293.

It is also well established that a statute limiting the time within which an action may be brought on a judgment of a court of another state does not violate the "full faith and credit" clause of the Federal Constitution as is held in the following citations:

U.S.C.A. Constitution, Article IV, Section I;
Great Western Telegraph Co. vs. Purdy,
162 U.S. 329;
16 S. Ct. 810;
40 L. Ed. 986;
Metcalf vs. City of Watertown, 153 U.S. 671;
14 S. Ct. 947;
38 L. Ed. 861.

In the case of *G. E. Terry Ley, Trustee, vs. C. L. Simmons, et al,* Kentucky Court of Appeals, June 20, 1952, 249 S.W. 2d 808; 36 A.L.R. 2d 563, it was held as follows:

(a) The law of the forum governs remedies and procedures.

(b) In the absence of a contrary statutory provision, the time limitation to an action to enforce judgment obtained in another state is controlled by the law of the forum.

(c) A statute limiting the time within which an action may be brought on a judgment of a court of another state does not violate the "full faith and credit" clause of the Federal Constitution.

(d) A statute of limitations does not extinguish the legal right but merely effects the remedy.

(e) That a state statute prohibits maintenance of an action on a judgment of a court of another state where the action is barred by the statute of limitations of that state does not preclude application of the period of the local statute to bar an action on a judgment not barred by the statute of limitations of the state of its rendition.

The contention that a statute of limitation of the orum as to a suit on a foreign judgment violated the "full aith and credit" clause of the Federal Constitution has lso been expressly overruled in the following cases:

U. S. — *Randolph vs. King,* 1867 Z Bond 104, Fed. Cas. No. 11,560;
Col. — *Kelly vs. Heller,* 74 Col. 470, 222 Pac. 648;
Ill. — *Schemmel vs. Cooksley,* 256 Ill. 412;
Iowa — *Meek vs. Meek,* 45 Iowa 294;
Ky. — *McArthur vs. Goddin,* 12 Bush 274;
La. — *Taylor vs. Joor,* 7 La. Ann. 272;

S. C. — *Napier vs. Gidiere,* 17 S. Car. 215;
Ten. — *Estes vs. Nyle,* 1838 Meigs, 34 (Antedating *M'elmoyle vs. Cohen* (U.S. Supra));
Wis. — *Fields vs. Munday,* 106 Wis. 383.

## THE DECISION IS CLEARLY CORRECT

The statute of limitations of five years is reasonable. (See *Great Western Tel. Co. vs. Purdy, supra,* as compared to *Kuykendall vs. Tod,* 219 Fed. 707, which held a three month period of limitation unconstitutional.)

## CONCLUSION

As Mr. Chief Justice Duckworth of the Supreme Court of the State of Georgia pointed out:

1. This Code Section refers solely to enforceability and not to suits of any kind.
2. There is no statutory law of the State of Georgia dealing with suits on domestic judgments, and none have been cited by counsel for the Appellant.
3. When the Legislature dealt with foreign judgments, in *Code Section* 3-701, it was dealing with the name class "foreign judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in *Georgia Code Section Annotated* 110-1001.

Therefore, AS TO THE QUESTION NUMBER ONE, Full Faith and Credit as required by the Constitution is not denied foreign judgments by *Code Section* 3-701 of the 1933 Code of Georgia as amended.

AS TO QUESTION NUMBER TWO, nor is equal

protection as required by the Fourteenth Amendment (*Georgia Code Section* 1-815) denied such judgment because domestic judgments are made valid for seven years and may be revived for an additional three years.

We respectfully submit, therefore, that the Appellant presents no substantial question for the decision of this Court, and that the judgment of the Supreme Court of Georgia should be affirmed.

MARTIN MCFARLAND
808 William-Oliver Building
Atlanta, Georgia 30303

*Counsel for Appellee*

## PROOF OF SERVICE

MARTIN McFARLAND, Attorney for J. F. CONWAY, Appellee herein, and a member of the Bar of the Supreme Court of the United States; hereby certify that on the 10th day of February, 1966, I have served copies of the foregoing Motion To Affirm on the Appellant therein named by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorneys of record:

Kilpatrick, Cody, Rogers, McClatchey & Regenstein
1045 Hurt Building
Atlanta, Georgia 30303

Burdick & Silvian
324 Datura Street
Post Office Box 2770
West Palm Beach, Florida 33402

MARTIN MCFARLAND
Attorney for J. F. Conway, Appellee
808 William-Oliver Building
Atlanta, Georgia 30303

## "APPENDIX A"

| | |
|---|---|
| ROBERT D. WATKINS, Plaintiff<br>vs.<br>J. F. CONWAY, Defendant | FULTON SUPERIOR COURT<br>CASE NO.<br>A-82670 |

### ORDER

The Motion for Summary Judgment filed by defendant on the 19th day of February, 1965, and plaintiff's Motion to Strike defendant's Plea of the Statute of Limitations coming on regularly to be heard, and after hearing from counsel for plaintiff and defendant, and it appearing to the Court that the defendant has withdrawn the plea to the statute of limitations filed on May 18, 1964, leaving filed of record the amended answer and plea to the statute of limitations ordered filed of record on February 1, 1965, and filed of record on February 1, 1965, and it further appearing to the Court that the sole question to be determined is the constitutionality of Georgia Code Section 3-701 as raised by defendant's Motion to Strike defendant's Plea of the Statute of Limitations, and it appearing to the Court that plaintiff's amended petition shows on its face that the said Florida judgment was obtained by the plaintiff and against the defendant on October 5, 1955 (5 years and 1 day before the filing of this suit, Case A-82670 Fulton Superior Court) and that said period of limitation had run,

NOW THEREFORE, after consideration, it is hereby ordered and adjudged as follows, to-wit:

(1) The Motion for Summary Judgment filed by de-

fendant on February 19, 1965, is hereby granted on the grounds that the statute of limitations provided by Georgia Code Section 3-701 has run and that Georgia Code Section 3-701 is hereby declared constitutional; and

(2) Plaintiff's Motion to Strike filed May 28, 1965, is hereby denied, it being found that Georgia Code Section 3-701 neither violates Article IV, Section I, (full faith and credit clause) of the United States Constitution nor Amendment XIV of the United States Constitution.

This 1st day of June, 1965.

VIRLYN B. MOORE
Judge, Superior Court
Atlanta Judicial Circuit

## "APPENDIX B"

DUCKWORTH, Chief Justice. 1. Full faith and credit as required by the Constitution, Art. IV, Sec. I (Code Section 1-401), is not denied foreign judgments by the provision of Code Section 3-701, which is: "All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained." 50 CJS 448, section 873, and cases cited; Metcalf vs. Watertown, 153 U.S. 671 14 SC 947, 38 LE. 861); Great Western Tel. Co. vs. Purdy, 162 U.S. 329 (16 SC 810, 40 LE. 986).

2. Nor is equal protection required by the 14th Amendment (Code Section 1-815) denied such judgments because domestic judgments are made valid for 7 years (Code Ann. 110-1001; Ga. L. 1955, pp. 417, 418), and may be revived during dormancy of 3 years from 7 to 10 years after rendition. Code Sections 110-1002, 110-1003. This law refers solely to enforceability and is unrelated to suits of any kind.

3. We know of no statutory law of this State dealing with suits on domestic judgments, and none has been cited by counsel for plaintiffs in error. Therefore, when the legislature dealt with foreign judgments in Code Section 3-701 it was dealing with the named class, "foreign judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Code Ann. Section 110-1001, supra.

4. Therefore, the plea of the limitations of Code Section 3-701 to this suit on a Florida judgment which was instituted more than five years after the date of that

judgment was valid, and the court did not err in sustaining the same and dismissing the suit based upon the Florida judgment.

Judgment affirmed. All the Justices concur, except Mobley, J., not participating for providential cause.

Argued September 15, 1965 — Decided September 22, 1965 — Rehearing Denied October 7, 1965.

Action on foreign judgment; constitutional question. Fulton Superior Court. Before Judge Moore.

Kilpatrick, Cody, Rogers, McClatchey & Regenstein, William G. Vance, for plaintiff in error.

Martin McFarland, contra.

BLANK

PAGE

BLANK

PAGE

Office-Supreme Court, U.S.
FILED
FEB 25 1966
JOHN F. DAVIS, CLERK

No. 65

IN THE 1965

# Supreme Court of the United States

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

On Appeal from the Supreme Court of the State of Georgia.

## REPLY TO MOTION TO AFFIRM.

EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.,
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

Of Counsel:
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303

Of Counsel:
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770
West Palm Beach, Florida 33402

BLANK

PAGE

No. 954

IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

---

On Appeal from the Supreme Court of the State of Georgia.

---

## REPLY TO MOTION TO AFFIRM

---

Both in his presentation of the issue and in the discussion thereof, the appellee has ignored the crux of this case insofar as the first question[1] regarding the violation of full faith and credit is involved. The right of a state to apply a statute of limitations to foreign judgments, so long as it does so evenhandedly without discrimination, is not and has not been questioned by appellant. See appellant's Jurisdictional Statement at pp. 6, 8, 9, 15. Yet, at most, this is all the appellee has said. Neither the issue framed by appellee nor the cases cited in appellee's Motion to Affirm deal with the precise question presented in this case, which is:

---

[1]Insofar as the second question presented in this case is concerned, the appellee has made no argument nor cited any authority other than his own statement to the effect that equal protection is not denied in the instant situation. Since the appellee's Motion to Affirm, therefore, ignores the equal protection question, no further mention thereof will be made in this Reply.

> Whether consistently with the full faith and credit clause, Georgia may limit the period of enforceability of foreign judgments to five years while permitting a ten-year period of enforceability for domestic judgments?

The appellee pointedly ignores the question of discrimination presented by appellant and discusses no authority with reference thereto. Certainly the states have a right to enact statutes of limitations against foreign judgments, as the cases cited in appellee's Motion bear out, but they do not have authority to pass such statutes of limitation where they effect discrimination in favor of domestic judgments and against foreign judgments. This has been clearly presented in appellant's Jurisdictional Statement, and no authority to the contrary has been presented by appellee.

The only two authorities dealt with by appellee which do touch upon the issue of discrimination are the cases of *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896), and *Metcalf v. City of Watertown*, 153 U.S. 671 (1894). These cases are discussed respectively at pp. 11-12, and at p. 17, fn. 4 of appellant's Jurisdictional Statement, and both clearly indicate that the discriminatory application of a period of enforceability in favor of domestic judgments is unconstitutional and in violation of the full faith and credit clause. These are the only two authorities cited by appellant which in any manner discuss statutes of limitations where such discrimination is found. Both of these authorities are favorable to appellant, and appellee cites no other authorities dealing with such issue. Discrimination is the key. While a state may legislate a reasonable statute of limitations against foreign judgments, such a statute of

limitations is not reasonable and is not constitutional if it prescribes a shorter period for the enforcement of foreign judgments than the state prescribes for the enforcement of domestic judgments.

Appellant is grateful to appellee for pointing out that this same discrimination exists in the State of Florida between foreign and domestic judgments.[2] As a matter of fact, this type of discrimination against foreign judgments, insofar as the period of enforceability is concerned, exists in nearly every state of the Union. It is submitted, therefore, that this question is of quite some practical importance due to the great extent that this type of discrimination is now practiced. Purely apart from the practical importance of the matter, however, it is clear that as a legal proposition, a substantial Federal question has been raised. No authority has been cited by appellee either directly or indirectly related to the issue of discrimination (other than authorities favorable to appellant), while appellant has cited an abundance of authority indicating that such discrimination vitiates the statute in question. For these reasons, jurisdiction of the Supreme Court to review this case on appeal is apparent. Appellant urges that the Supreme Court give preliminary consideration to the case and permit briefs and oral arguments on the merits and dismiss the Motion to Affirm.

---

[2]See page 4 of appellee's Motion to Affirm where it is stated that "Florida has a seven-year statute of limitations on foreign judgments while it maintains a twenty-year statute of limitations on domestic judgments.

Respectfully submitted,

EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

*Of Counsel:*
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303.

*Of Counsel:*
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770,
West Palm Beach, Florida 33402

**PROOF OF SERVICE**

Emmet J. Bondurant, attorney for Robert D. Watkins, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on this 24 day of February, 1966, I served a copy of the foregoing Reply on the Appellee therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Martin McFarland, 808 William Oliver Building, Atlanta, Georgia, 30303.

Emmet J. Bondurant,
1045 Hurt Building,
Atlanta, Georgia 30303
Attorney for
Robert D. Watkins, Appellant

BLANK

PAGE

SUPREME COURT, U.S.

Office-Supreme Court, U.S.
FILED
AUG 25 1966
JOHN F. DAVIS, CLERK

No. 65

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

On Appeal from the Supreme Court of the State of Georgia.

## BRIEF FOR THE APPELLANT

MILES J. ALEXANDER
EMMET J. BONDURANT, II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.,
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

Of Counsel:
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303

Of Counsel:
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770
West Palm Beach, Florida 33402

BLANK

PAGE

# INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Basis of jurisdiction | 1 |
| Statute involved | 2 |
| Questions presented | 3 |
| Statement of the case | 3 |
| Summary of argument | 5 |
| Argument | 7 |
| Conclusion | 27 |
| Proof of service | 28 |


## Cases Cited


| | |
|---|---|
| *Christmas* v. *Russell*, 72 U.S. (5 Wall.) 290 (1886) | 10 |
| *Douglas* v. *New York*, N.H.&H. R.R.., 279 U.S. 377 (1929) | 15 |
| *Easterlin* v. *New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902) | 7 |
| *Fauntleroy* v. *Lum*, 210 U.S. 230 (1908) | 8, 15 |
| *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896) | 11 |
| *Hughes* v. *Fetter*, 341 U.S. 609 (1951) | 5, 12, 21 |
| *Kenney* v. *Supreme Lodge of the World*, 252 U.S. 411 (1920) | 9 |
| *Kentucky Fin. Corp.* v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923) | 22 |
| *McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934) | 16 |

## Cases Cited (Continued)

Page

*M'Elmoyle* v. *Cohen*, 38 U.S. (13 Pet.) 312 (1839) ..... 8

*Metcalf* v. *City of Watertown*, 153 U.S. 671 (1894) ..... 11, 17

*Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268 (1935) ..... 8, 18

*Mondou* v. *New York, N.H.&H. R.R.*, 223 U.S. 1 (1912) ..... 15

*Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927) ..... 24

*Roche* v. *McDonald*, 275 U.S. 449 (1928) ..... 8

*Testa* v. *Katt*, 330 U.S. 386 (1947) ..... 15

*Union Trust Co.* v. *Grossman*, 245 U.S. 412 (1918) ..... 15

*Walters* v. *City of St. Louis*, 347 U.S. 231 (1954) ..... 20

*Waterman* v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887) ..... 17

*Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949) ..... 20

*Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) ..... 5, 12, 13

## Constitutional Provisions and Statutes Cited

Art. IV, § 1 United States Constitution ..... 2, 4, 12

Amend. XIV, § 1 United States Constitution ..... 2, 4, 26

28 U.S.C. § 1257(2) ..... 2

Cases Cited (Continued)

Page

28 U.S.C. § 1738 ..... 1, 3

Ga. Code § 3-701 (1933) ..... 1, 2, 4, 5, 6, 7, 8, 18, 19, 21, 26, 27

Ga. Code § 110-1001 (1933), as amended by 1955 Ga. Laws, pp. 417, 418 ..... 7

Ga. Code § 110-1002 (1933) ..... 7

Miscellaneous

CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963) ..... 27

Currie, *The Constitution and the "Transitory" Cause of Action*, 73 HARV. L. REV. 36 (1959) ..... 22

BLANK

PAGE

No. 65

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1966

ROBERT D. WATKINS,
Appellant,

versus

J. F. CONWAY,
Appellee.

---

On Appeal from the Supreme Court of the State of Georgia.

---

# BRIEF FOR THE APPELLANT

---

## OPINION BELOW

The opinion of the Supreme Court of the State of Georgia is reported in *Watkins* v. *Conway*, 221 Ga. 374, 144 S.E. 2d 721 (1965), and is printed at pages 10 through 12 of the Record.

## BASIS OF JURISDICTION

This action was brought pursuant to 28 U.S.C. § 1738, and the common law of Georgia by Robert D. Watkins, appellant herein, to enforce a Florida judgment against J. F. Conway, appellee herein. Appellee defended on grounds that the five-year statute of limitations against foreign judgments, Ga. Code § 3-701, had run by one day, to which defense appellant interposed the objection that such statute was void and unconstitutional in

that it deprived appellant both of the guaranty of full faith and credit provided foreign judgments by Article IV, § 1, of the United States Constitution, and also, of the equal protection of the laws guaranteed by Amendment XIV, § 1, of the United States Constitution. Judgment of the Supreme Court of the State of Georgia (R. pp. 10-11) was dated and entered on September 22, 1965, affirming the trial court's decision that the statute was constitutional, and dismissing appellant's case. A motion for rehearing was filed by appellant on September 30, 1965, and was denied by the Georgia Supreme Court on October 7, 1965 (R. p. 10). Notice of appeal was filed in that court on November 29, 1965 (R. pp. 13-16).

The jurisdictional statement was filed in this Court on January 26, 1966, and probable jurisdiction was noted on March 21, 1966 (R. p. 16). *Watkins* v. *Conway*, 383 U.S. 941 (1966). The jurisdiction of the Supreme Court of the United States to review this decision by appeal is conferred by 28 U.S.C. § 1257(2).

## STATUTE INVOLVED

The statute, the validity of which is challenged by appellant in this appeal, is Ga. Code § 3-701 (1933), and it provides:

> "Suits upon foreign judgments. — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

## QUESTIONS PRESENTED

I.

Whether consistently with the full faith and credit clause, Georgia may apply a five-year statute of limitations to bar the enforcement of a foreign judgment while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an additional period of five years?

II.

Whether under the equal protection clause Georgia may discriminate against judgments rendered in the courts of other states, solely on the basis of their foreign origin, by applying a five-year statute of limitations to such judgments while permitting enforcement of Georgia judgments rendered at the same time under similar circumstances for an additional five-year period?

## STATEMENT OF CASE

On October 5, 1955, the appellant, Robert D. Watkins, obtained a judgment against appellee, J. F. Conway, in the Circuit Court of the 15th Judicial District of the State of Florida. Thereafter, on October 5, 1960, five years and one day after the entry of this judgment, the appellant brought suit against appellee on this Florida judgment in the Superior Court of Fulton County, Georgia, pursuant to 28 U.S.C § 1738 and the common law of Georgia (R. p. 1).

The appellee pleaded the five-year statute of limita-

tions against foreign judgments prescribed by Ga. Code § 3-701 (1933) (R. pp. 2-3). Appellant moved to strike the plea of the statute of limitations on grounds that Ga. Code § 3-701 is unconstitutional and void, since it seeks to discriminate against foreign judgments by denying enforcement under circumstances in which enforcement of a Georgia judgment would be permitted, thereby violating both the full faith and credit clause (Art. IV, § 1, U. S. Const.) and the equal protection clause (Amend. XIV, § 1, U. S. Const.) of the Constitution (R. pp. 3-8). On June 1, 1965, the Superior Court of Fulton County granted appellee's motion for summary judgment on the sole ground that the Florida judgment was barred by the five-year statute of limitations of Ga. Code § 3-701, which the court found to be constitutional (R. pp. 9-10). Appellant's motion to strike was denied (R. pp. 9-10).

The appellant took a timely appeal to the Supreme Court of Georgia urging the unconstitutionality of the application of the five-year statute of limitations to bar the enforcement of the Florida judgment. On September 22, 1965, the Supreme Court of Georgia affirmed the decision of the trial court upholding the constitutionality of the statute (R. pp. 10-11). Although the Georgia Supreme Court recognized that the effect of its decision was to deny enforcement of appellant's Florida judgment under circumstances in which a Georgia judgment obtained at the same time would have been enforced, the court, nevertheless, held that the shorter period of limitations violated neither the full faith and credit clause nor the equal protection clause of the Constitution. Appellant's motion for rehearing was denied without opinion on October 7, 1965 (R. p. 12).

## SUMMARY OF ARGUMENT

Under Georgia law domestic judgments remain enforceable for a period of ten years while the judgments of other states are enforceable for only five years. It is submitted that this five-year limitation period provided by Ga. Code § 3-701 (1933) violates both the full faith and credit clause and the equal protection clause of the Constitution since the effect of this statute is to allow the State of Georgia to discriminate in favor of its own judgments and against foreign judgments.

The right of a state to impose some limitation period against foreign judgments is not questioned in this case. It is clear that a state may apply a statute of limitations to foreign judgments, so long as it does so evenhandedly, without discrimination. However, the full faith and credit clause does prohibit the application of such statutes of limitation where they effect discrimination as to the period of enforcement in favor of domestic judgments.

*Hughes* v. *Fetter,* 341 U.S. 609 (1951) and *Wells* v. *Simonds Abrasive Co.,* 345 U.S. 514 (1953) perhaps best exemplify the numerous cases touching on the issue of discrimination with respect to the full faith and credit clause. In *Hughes* it was ruled that the full faith and credit clause required the State of Wisconsin to enforce a foreign state's wrongful death action, under circumstances in which Wisconsin would have allowed an action for wrongful death occurring in Wisconsin. The rationale in *Hughes* was crystalized shortly thereafter in the *Wells* case. In *Wells,* suit was brought in Pennsylvania based upon a wrongful death occurring in Alabama. Pennsylvania applied a one-year statute

of limitations to all wrongful death actions, either domestic or foreign, while Alabama imposed a two-year statute of limitations. In rejecting the plaintiff's contention that *Hughes* required the two-year Alabama limitation period to be applied rather than the one-year Pennsylvania period, this Court stated at 518:

> "Our decisions in Hughes v. Fetter . . . and First National Bank v. United Air Lines . . . do not call for a change in the well-established rule that the forum state is permitted to apply its own period of limitation. *The crucial factor in those two cases was that the forum laid an uneven hand on causes of action arising within and without the forum state. Causes of action arising in sister states were discriminated against. Here Pennsylvania applies her one-year limitation to all wrongful death actions wherever they may arise.*" (Emphasis added.)

It is implicit from the *Hughes* and *Wells* decisions that statutes of limitation which discriminate against foreign causes of action or suits on foreign judgments are unconstitutional under the full faith and credit clause. A state may not allow a longer period of enforceability for its own judgments than it allows foreign judgments.

By the same token the discriminatory treatment inherent in Ga. Code § 3-701 denies to holders of foreign judgments the equal protection of the laws which is guaranteed by the Fourteenth Amendment. The effect of the Georgia statute is undoubtedly a purposeful and systematic discrimination designed to favor hold-

ers of domestic judgments over holders of the judgments granted in other states. Discrimination can be justified under the equal protection clause only if there are reasonable differences between the favored and disfavored classes which justify an unequal classification. There is no reasonable basis for differences in classification in the instant case. The fact that the mode of enforcement of a foreign judgment is different from the mode of enforcement of a domestic judgment does not justify the classification of the Georgia statute. Certainly no justification can be found in the source of the judgment, i.e., a court of a sister state. Thus, no reason can be assigned for the discriminatory enforcement provisions in the instant situation, and, accordingly, they constitute a denial of equal protection of the laws guaranteed by the Fourteenth Amendment.

## ARGUMENT

Under Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418, and Ga. Code § 110-1002 (1933), a Georgia judgment remains enforceable for a period of ten years without the requirement of any action on the plaintiff's part.[1] But, by virtue of the statute in question, Ga. Code § 3-701 (1933), a foreign state's

[1] If within seven years the holder of the Georgia domestic judgment merely issues an execution (attempts to levy) upon the judgment, and records the execution upon the general execution docket, the judgment will be renewed for another seven years, and this process may be repeated indefinitely. Ga. Code § 110-1001 (1933) as amended, 1955 Ga. Laws, pp. 417, 418. See *Easterlin* v. *New Home Sewing Mach. Co.*, 115 Ga. 305, 41 S.E. 595 (1902). If no action is taken within seven years, then the domestic judgment becomes dormant, but the holder may revive it by bringing suit on the dormant judgment within three years. Ga. Code § 110-1002 (1933).

judgment becomes unenforceable after five years. It is clear, therefore, that the State of Georgia has discriminated against foreign judgments in favor of its own judgments. It is appellant's contention that such discrimination deprives him both of the full faith and credit guaranteed foreign judgments and also of the equal protection of the laws to which he is entitled under the Constitution of the United States.

**A. Georgia Code § 3-701 (1933), which Discriminates Against Foreign Judgments by Providing a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Violates the Full Faith and Credit Clause of the Constitution.**

The full faith and credit clause requires the State of Georgia to give the *same effect* to a Florida judgment, that the State of Florida itself would give.[2] However, a state is not precluded from applying a reasonable statute of limitations to foreign judgments. Otherwise stated, a state may apply a statute of limitations on foreign judgments if and only if the statute of limitations would not discriminate in favor of its own domestic judgments — that is, only if domestic judgments are not allowed to be enforced for a longer period of time than foreign judgments.

Thus in *M'Elmoyle* v. *Cohen*, 38 U.S. (13 Pet.) 312 (1839), this Court held that the forum state (Georgia) might apply its own statute of limitations to a foreign

---

[2]See, e.g. *Milwaukee County* v. *M. E. White, Co.*, 296 U.S. 268 (1935); *Roche v. McDonald*, 275 U.S. 449, 451-52 (1928); *Fauntleroy* v. *Lum*, 210 U.S. 230 (1908).

judgment. The Court based its holding on the reasoning *that the statute of limitations was a plea to the remedy, not to the merits of the cause of action,* and consequently, would bar the cause.[3] The Court's rationale was that the forum state may legislate limitations upon the remedy, (*i.e.*, procedural limitations), although it could not legislate any limitations upon the merits of the foreign judgment. Subsequent cases have upheld the viewpoint that states may, consistent with full faith and credit, legislate upon the remedy in regard to the enforcement of foreign judgments and causes of action, but only if the foreign judgment or cause of action is not discriminated against. Where such discrimination exists the guaranty of full faith and credit is violated.

For example, in *Kenney* v. *Supreme Lodge of the World,* 252 U.S. 411 (1920), this Court held that a state statute prohibiting actions for death occurring in other

---

[3]This case involved substantially the same Georgia statute (prior to minor amendments) at issue in the instant case. However, the only argument presented in that case was the right of Georgia to prescribe *any* limitation at all upon the right of the holder of a foreign judgment to sue in Georgia courts. Plaintiff argued that the State of Georgia had no right to place *any* limitation upon the enforcement of foreign judgments, and this argument was rejected. In rebutting this argument, both defendant and the Court noted (in dicta) that the State of Georgia had the power to place a limitation upon the period of enforcement of its own judgments, and consequently, should have the power to place a limitation upon foreign judgments. While this Court was aware of differences in the two time periods of limitation, the issue of discrimination was not presented to or examined by the Court; therefore, it is clear that *M'Elmoyle* only holds that the State of Georgia can apply a reasonable statute of limitations against foreign judgments. It is submitted that the authorities hereinafter discussed clearly demonstrate that such a limitation is unreasonable and a denial of full faith and credit where a longer period of enforceability is proscribed for domestic judgments.

states, construed as depriving the courts of the state of jurisdiction of an action on a judgment obtained in another state on a cause of action for wrongful death, violated the full faith and credit clause of the United States Constitution. It was argued that since the statute merely withdrew jurisdiction from the former court to entertain suits on foreign judgments for wrongful death, *and since thus the statute merely affected the remedy and not the right,* the statute was not in violation of the full faith and credit clause. In rejecting this argument the Court stated at 414-15:

> "Moreover, no doubt there is truth in the proposition that the Constitution does not require the State to furnish a Court. But it is also true that there are limits to the power of exclusion . . . *[I]t is plain that a State cannot escape its constitutional obligations by the simple device of denying jurisdiction in such cases to Courts otherwise competent.*" (Emphasis added.)

Similarly in *Christmas* v. *Russell,* 72 U.S. (5 Wall.) 290 (1886), a Mississippi statute provided that where the cause of action which led to the foreign judgment would not have been barred by the Mississippi statute of limitations, the judgment would be enforced; but if the underlying cause of action would have been barred in the Mississippi tribunals under its statute of limitations, then the suit on the judgment would also be barred. This Court held that under the full faith and credit clause, Mississippi had no power to enforce such a statute of limitations. Thus, a state may not place a limitation (such as a statute of limitations) on

the remedy, where that limitation operates in a discriminatory manner in favor of its own interests.

In *Great Western Tel. Co.* v. *Purdy*, 162 U.S. 329 (1896) (one of the two cases cited by the Georgia Supreme Court[4]), there was some question as to whether plaintiff was suing on a contract or on a foreign judgment recovered by reason of that contract. This Court construed the action to be based on contract since the foreign judgment was invalid by reason of failure of service, and, then, held that the suit was barred by the forum state's statute of limitations. In applying the forum state's statute of limitations, the Court was careful to emphasize that no attempt had been made to discriminate against the foreign claim:

> "The limitation of actions is governed by the *lex fori*, and is controlled by the legislation of the state in which the action is brought, as construed by the highest court of that state, even if the legislative act or the judicial construction differs from that prevailing on other jurisdictions. . . .
>
> "*Neither the statutes nor the decisions of the state of Iowa* [*the forum state*] *upon this subject have made any discrimination against the citizens, the contracts, or the judgments of other states, or against any right asserted under the constitution or laws of the United States. The case is thus distinguished from Christmas v. Russell, 5 Wall. 290, cited at the bar.* [In which discrimination against certain

[4]The other case, *Metcalf* v. *City of Watertown*, is discussed *infra* at footnote 6, and also supports appellant's contention.

> specific foreign judgments was held to be unconstitutional.]" Id. at 339. (Emphasis added.)

The language of the Court makes inescapable the conclusion that if there had been discrimination involved — that is, if the statute of limitations applied against foreign causes of action or judgments had been for a shorter period than the statute of limitations against local causes of action or judgments — such a statute of limitation would be unconstitutional.

It is submitted that *Hughes* v. *Fetter*, 341 U.S. 609 (1951) and *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953), read together, emphatically demand a finding that full faith and credit has been denied in the instant case. In *Hughes*, plaintiff, basing his complaint on an Illinois wrongful death statute, brought an action in a Wisconsin state court to recover damages for the death of a man who was fatally injured in an automobile accident in Illinois. The trial court held that a Wisconsin statute, which created a right of action only for deaths in that state, established a local policy against Wisconsin's entertaining suits brought under the wrongful death acts of other states and dismissed the action. The Wisconsin Supreme Court affirmed, notwithstanding the contention that the local statute, so construed, violated the full faith and credit clause of Article IV, § 1 of the Constitution. In overruling the Wisconsin decision, this Court stated at 611:

> "We are called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrong-

> ful death act. . . . It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent."

Thus, this Court held that Wisconsin was under an obligation to enforce the Illinois wrongful death action. It was ruled that Wisconsin had no strong policy against wrongful death actions as evidenced by the fact that it allowed an action for wrongful death occurring in Wisconsin, and that consequently, the full faith and credit clause required Wisconsin to enforce the out-of-state cause of action.

Subsequently, in *Wells* v. *Simonds Abrasive Co.*, 345 U.S. 514 (1953) suit was brought in Pennsylvania for a death occurring in Alabama. The Alabama statute of limitations for a wrongful death action was two years while the Pennsylvania statute of limitations was one year. The action was brought in less than two years, but after one year had passed. The District Court of Pennsylvania had applied the Pennsylvania statute of limitations and dismissed the action. The plaintiff relied on the *Hughes* case, stating that under that case the forum state was required to enforce an out-of-state wrongful death action. The Court citing *M'Elmoyle* v. *Cohen, supra* at page 8, stated that long ago it had held that applying the statute of limitations of the forum to a foreign substantive right did not deny full faith and credit; and it further noted at 517:

> "The rule that the limitations of the forum apply (which this Court has said meets th re-

quirements of full faith and credit) is the usual conflicts rule of the states. . . .

". . . . Our prevailing rule is that the Full Faith and Credit Clause does not compel the forum state to use the period of limitation of a foreign state."

This Court emphasized, however, at 518:

"Our decisions in Hughes v. Fetter . . . and First National Bank v. United Air Lines . . . do not call for a change in the well-established rule that the forum state is permitted to apply its own period of limitation. *The crucial factor in those two cases was that the forum laid an uneven hand on causes of action arising within and without the forum state. Causes of action arising in sister states were discriminated against. Here Pennsylvania applies her one-year limitation to all wrongful death actions wherever they may arise.*" (Emphasis added.)

Thus, *Wells* reinforces the proposition that statutes of limitation which discriminate against foreign causes of action or suits on foreign judgments are unconstitutional under the full faith and credit clause. A state may certainly apply its own statute of limitations to foreign judgments, but if it does so, it must not discriminate. It cannot grant its own judgments a longer period of enforceability than it allows foreign judgments.

The error of the Georgia Supreme Court in its rul-

ing in this case is magnified by the fact that the full faith and credit clause is applied even more stringently to foreign judgments than to foreign causes of action.[5] *Hughes* and *Wells* demonstrate that the full faith and credit clause clearly prohibits states from discriminating against *causes of action* arising under the laws of sister states. *A fortiori*, a state may not discriminate against *foreign judgments* under circumstances in which domestic judgments, rendered at the same time, would be enforced.

Analogous considerations have prohibited discrimination against Federally-created causes of action. A state may not refuse to enforce the laws of another sovereign while enforcing its own similar laws. Thus, while a state court, under the *supremacy clause* (as opposed to the full faith and credit clause) of the Constitution is obligated to enforce Federal law [*Testa* v. *Katt*, 330 U.S. 386 (1947)], on matters going *to the remedy* rather than the right, a state court is under no obligation to enforce Federal law as long as it does not discriminate between Federal law and state law. Consequently, in *Mondou* v. *New York, N.H.&H. R.R.*, 223 U.S. 1 (1912), in accord with *Testa*, an action to enforce rights arising under the Federal Employers' Liability Act could not be declined by the courts of the state merely because the suit was based upon a Federally created cause of action. In *Douglas* v. *New York, N.H. & H.R.R.*, 279 U.S. 377 (1929), however, the New

[5] *Compare Union Trust Co.* v. *Grossman*, 245 U.S. 412 (1918) *with Fauntleroy* v. *Lum*, 210 U.S. 230 (1908). In *Union Trust*, it was held that states, may for reasons of public policy, close their courts to *suits on causes of action* which the state deems contrary to its public policy. However, in *Fauntleroy* the forum state was required by this Court to enforce *a judgment* based upon a cause of action repugnant to the public policy of that state.

York courts were permitted to dismiss an action under the Federal Employers' Liability Act brought by a Connecticut resident against a Connecticut corporation based on an accident occurring in Connecticut. A New York statute permitted actions by non-residents against a foreign corporation only in certain classes of cases, of which this was not one. The Court held that New York was not obligated to enforce Federal law in this situation. State and Federal actions were treated equally. In *McKnett* v. *St. Louis & S.F. Ry.*, 292 U.S. 230 (1934), an Alabama statute had opened the doors of Alabama courts to suits against foreign corporations arising under the laws of other states. This statute superseded the previous rule of decision that no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action arose in Alabama. This Court reversed the Alabama Supreme Court's dismissal of an action based on an out-of-state accident arising under the Federal Employers' Liability Act. The Alabama Supreme Court had held that the statute in question lifted the trial bar only for causes of action arising under the laws of sister states, and not under Federal law. The defendant insisted that the statute as construed was consistent with the Federal Constitution since the state could determine the limits of the jurisdiction of its courts, *i.e.*, in effect, stating that Alabama could regulate the remedy. This Court stated at 233-34:

> "While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, Douglas v. New York, New Haven & Hartford R. R. Co. . : . the Federal Constitution prohibits state courts of general jurisdiction from

refusing to do so solely because the suit is brought under a federal law. *The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced.* The plaintiff is cast out because he is suing to enforce a federal act. *A state may not discriminate against rights arising under federal laws.*"[6] (Emphasis added)

---

[6]The Supreme Court of Georgia erroneously cited as authority for its ruling that the full faith and credit clause was not violated, the case of *Metcalf* v. *City of Watertown*, 153 U.S. 671 (1894). This case did not involve the applicability of the statute of limitations against foreign judgments. Rather it involved the questions of the constitutionality and the applicable period of limitations against judgments of Federal courts within the forum state. A Wisconsin statute was subject to some ambiguity as to whether judgments of Wisconsin Federal courts were prescribed by the same time period as judgments of the State courts of Wisconsin. There was a Wisconsin Supreme Court case, however, [*Waterman* v. *Town of Waterloo*, 34 N.W. 137 (Wis. 1887)] which held that a shorter period of limitations applied to the judgments of the Wisconsin Federal courts than to judgments of Wisconsin's state courts. Notwithstanding this holding, the United States Supreme Court indicated that if the Supreme Court of Wisconsin had been faced with this question again they would have decided otherwise. The Supreme Court cites some other Wisconsin authorities which are not directly on point to reinforce its position and then states at 681, 14 Sup. Ct. at 951:

> *"Moreover, it should be observed that the question of the power under the constitution to control in any way or to discriminate as to federal judgments rendered in the state does not seem to have been brought to the attention of the court [in Waterman], and was not adverted to."* (Emphasis added.)

The Court further states at 683:

> "We cannot attribute to the legislature of Wisconsin any design to discriminate against the judgments and decrees of the courts of the United States rendered in that state by reducing the statutory period for the commencement of actions thereon to a less number of years than obtained as to the judgments and decrees of the state courts. . . ."

It is clear from this decision that this Court was forced to reinterpret a Wisconsin statute, and, in effect, overrule the

Analogous considerations which underlie the full faith and credit clause prohibit a state from discriminating against judgments taken in other states. Discrimination based merely on the source of the judgment is invalid. A plaintiff should not be defeated merely because he has taken his judgment in another state rather than in the forum state. Although a state has a power to control the remedy by such means as a statute of limitations, it cannot discriminate against judgments of other states in so doing.

It cannot be denied that the State of Georgia has discriminated against foreign judgments. Following the *Hughes* and *Wells* cases and other authorities heretofore discussed, the conclusion is, therefore, inescapable that Ga. Code § 3-701 (1933) violates the full faith and credit clause.

> "The very purpose of the full-faith and credit clause was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin."

*Milwaukee County* v. *M. E. White Co.*, 296 U.S. 268, 276-7 (1935). To allow the various states to discriminate against foreign judgments by imposing shorter pe-

---

Wisconsin Supreme Court's interpretation of its own statute, primarily on the basis that any other interpretation would be unconstitutional due to the fact that the other interpretation would effect discrimination against Federal judgments.

riods of limitation would impair the very purpose and effectiveness of the full faith and credit clause. Thus, it is submitted that Ga. Code § 3-701 (1933) violates the full faith and credit clause and is, therefore, unconstitutional since it discriminates in favor of Georgia judgments and against out-of-state judgments.

**B. Georgia Code § 3-701 (1933), Which Provides a Shorter Period of Time for the Enforcement of Foreign Judgments than for the Enforcement of Judgments Obtained in Georgia Courts, Violates the Equal Protection Clause of the 14th Amendment in that it Arbitrarily Discriminates Against those Suitors in Georgia Courts Who Sue on Foreign Judgments.**

The question of a forum state's refusal to enforce valid foreign judgments has, of course, been before this Court on countless occasions and the resolution of the questions presented in such cases has always been based upon the full faith and credit clause. The precise question presented in this petition has never been before this Court, and, since it involves the State's refusal to enforce a foreign judgment under circumstances in which a domestic judgment could be enforced, this Court could, therefore, find substantial historical justification for basing its decision upon the full faith and credit clause. Although there exists an obvious violation of full faith and credit practiced by Ga. Code § 3-701 (1933), it is also equally apparent the Georgia statute offends the equal protection clause of the Constitution.

The language of the equal protection clause — "nor shall any state . . . deny to any person within its jurisdiction the equal protection of the laws" — clearly condemns Georgia's refusal to enforce appellant's judgment when a similarly situated holder of a Georgia judgment would be allowed to enforce his judgment. This statute undoubtedly effects a purposeful and systematic discrimination designed to favor one individual or class over another. *Watkins* v. *Oaklawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949). In order to justify such discrimination, the individuals or classes discriminated against must be the subject of a classification based upon reasonable differences between the favored and disfavored individuals or classes. See, *e.g.*, *Walters* v. *City of St. Louis*, 347 U.S. 231, 237 (1954). No such difference between petitioner and a similarly situated holder of a Georgia judgment has been suggested; certainly only the most fertile imagination could conjure up a reason for the classification found in the Georgia statute. Can justification for the uneven treatment be found in (1) the fact that petitioner holds a foreign rather than a domestic judgment and (2) the fact that petitioner must enforce his judgment by bringing an action in Georgia whereas the holder of a Georgia judgment could enforce his judgment simply by levy or other distraint? Certainly, as a practical matter, neither the source of the judgment nor the mode of its enforcement provide reasonable bases for the Georgia classification. As illustrated by the cases discussed previously, in the full faith and credit area the source of the judgment alone is no reason for classification, and it is correspondingly apparent that a discrimination based on the source of the judgment must also constitute a de-

nial of equal protection of the laws. Similarly, the mode which must be employed to enforce the judgment affords no real basis for the Georgia classification. Thus, it is clear that the classification is arbitrary, and the resulting discrimination, therefore, transgresses the equal protection clause.

Although it is vigorously submitted that Ga. Code § 3-701 (1933) violates the full faith and credit clause, appellant believes that the Georgia classification found therein also constitutes a basic and classic example of denial of equal protection of the laws. Indeed, Professor Currie, for one, found such cases as *Hughes* v. *Fetter*, 341 U.S. 609 (1951) to be most appropriately considered as equal protection cases. In his analysis of *Hughes*, he stated:

> "The inescapable fact is that Wisconsin, in its wrongful-death statute, established a policy for the protection of Wisconsin residents generally, and then excluded from the protection of that policy a certain class of residents: those whose deaths resulted from injuries received elsewhere. Since no constitutionally tenable policy of the state relating either to the administration of its courts or to any of its other governmental concerns can be suggested which can justify this classification, the classification is arbitrary and capricious. The vice, therefore, of the state action in *Hughes* v. *Fetter* was that it denied to members of the disfavored class the equal protection of the laws. The reliance of the Supreme Court on the full-faith-and-credit clause was both unnecessary and confusing."

Currie, *The Constitution and the "Transitory" Cause of Action*, 73 HARV. L. REV. 36, 60-61 (1959). Doubtless, the reliance of the Court upon the full faith and credit clause in the *Hughes* decision has historical justification, but certainly the logic of constitutional theory would be advanced by recognizing that *Hughes* v. *Fetter* is based implicitly upon those concepts inherent in equal protection.

While there are no cases in which the enforcement of judgments has been keyed to the equal protection clause, this court has in other situations indicated the peculiar applicability of the equal protection clause to the instant case. In *Kentucky Fin. Corp.* v. *Paramount Auto Exch. Corp.*, 262 U.S. 544 (1923), this Court reviewed and reversed a decision of the Supreme Court of Wisconsin. There, a Kentucky corporation brought an action of replevin in Wisconsin to recover an automobile unlawfully taken from its possession by a third person and sold to the defendant in Wisconsin. The plaintiff did no business in Wisconsin. Pursuant to a Wisconsin statute, the defendant obtained an order requiring the plaintiff's secretary, who resided and was employed in Louisville, Kentucky, to appear in Milwaukee for pre-trial examination and to bring with him all relevant files and records. When the secretary, with the plaintiff's approval, refused to comply with the order, the complaint was stricken and the action was dismissed. Noting that the Wisconsin statute applied only to foreign corporations and that such an examination could not be ordered with respect to residents of Wisconsin, be they corporation or individual, or to non-resident individuals, the Court asserted:

> "No doubt a corporation of one state seeking relief in the courts of another must conform to the prevailing modes of proceeding in those courts and submit to reasonable rules respecting the payment of costs or giving security therefor and the like . . . but it cannot be subjected, *merely because it is such* [*foreign*] *a corporation, to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations. Here the statute authorized the imposition, and there was imposed, on the plaintiff a highly burdensome requirement because of its corporate origin* — a requirement which under the statute could not be laid on an individual suitor in the same situation. The discrimination was essentially arbitrary. There could be no reason for requiring a corporate resident of Louisville to send its secretary, papers, files, and books to Milwaukee for the purposes of an adversary examination that would not apply equally to an individual resident of Louisville in a like case. The discrimination is further illustrated by the provision that as to all residents of Wisconsin, individual and corporate, the examination should be had in the county of their residence, no matter what its distance from the place of the suit." (Emphasis added.)

262 U.S. at 551.

As shown by the above quotation, the precise basis for the decision was that the statute discriminated arbitrarily against foreign corporations. Moreover,

the case provides a complete analogy to the instant situation, since petitioner has been denied the right to enforce his judgment in the Georgia courts, because it is a foreign judgment. To paraphrase, he cannot be subjected, simply because he is the holder of a *foreign* judgment "to onerous requirements having no reasonable support in that fact and not laid on other suitors in like situations."

Another of this Court's decisions also provides an analogy to the instant case: *Power Mfg. Co.* v. *Saunders*, 274 U.S. 490 (1927). That was a personal injury action by the plaintiff against an Ohio corporation doing business in Arkansas where plaintiff's injury occurred. Defendant had complied with the Arkansas requirements to do business in that state and had designated an agent for service of process as well as a principal office. It did no business and had no officer or agent elsewhere in the state. Suit was filed by the plaintiff in a county other than the designated one which eventually resulted in a judgment for the plaintiff. The Arkansas venue statute allowed suit to be brought against a foreign corporation doing business in Arkansas in any county, but limited the venue of actions against domestic corporations to a county in which it had a place of business or in which its chief officer resided. Actions against individuals were required to be brought in the county where the individual resided or could be found.

This Court found that the Arkansas venue statute denied the foreign corporation equal protection of the laws because it was "very plain that the statutes discriminate against foreign corporations, and in favor of domestic corporations and individuals, and that the

discrimination is not theoretical merely, but real and substantial." 274 U.S. at 493. The Court reasoned:

> "No doubt there are subjects as to which corporations admissibly may be classified separately from individuals and accorded different treatment, and also subjects as to which foreign corporations may be classified separately from both individuals and domestic corporations and dealt with differently. But there are other subjects as to which such a course is not admissible; *the distinguishing principle being that classification must rest on differences pertinent to the subject in respect of which the classification is made.*
>
> "Here the separate classification of foreign corporations is in respect of the venue or place of bringing transitory actions. The statutes mean foreign corporations doing business within the state by her permission, and therefore having a fixed place of business therein and a resident agent on whom process may be served. We speak only of them. *So far as their situation has any pertinence to the venue of transitory actions, it is not distinguishable from that of domestic corporations and individuals. Certainly there is no substantial difference. The opinion of the state court does not point to any relevant distinction, nor have counsel suggested any. Of course the restricted venue as to domestic corporations and individuals is prompted by considerations of convenience and economy; but these considerations have equal application to foreign cor-*

*porations. So far as the plaintiffs in such actions are affected, it is apparent that there is no more reason for a statewide venue when the action is against a foreign corporation than when it is against a domestic corporation or a natural person. So we conclude that the special classification and discriminatory treatment of foreign corporations are without reasonable basis and essentially arbitrary."* (Emphasis added.)

274 U.S. at 493-94.

This reasoning is likewise applicable to the present case. There is no reason for discriminating against foreign judgments in favor of domestic judgments by granting a longer period of enforcement for the latter. The only basis for the classification which can be perceived is that the judgments are foreign rather than domestic, and this, of course, is no reason at all. It is then clear that the classification found in Ga. Code § 3-701 (1933) is arbitrary and constitutes a denial of equal protection of the laws guaranteed by the 14th Amendment to the Constitution.[7]

---

[7]Although it can in truth be said that this portion of the application for an appeal lacks direct decisional support, this dearth of authority is perhaps best explained by Professor Currie:

"Conflict-of-laws cases in which the Equal Protection Clause has been a decisive factor have been rare indeed. Legislatures seldom enact laws for the sole benefit of local citizens or residents; courts are not disposed to interpret laws so as to give such effect. In part this may be true because the effect of the Equal Protection Clause is so clear; in greater part it seems a result of a distaste for discrimination, independent of constitutional prohibitions. It is fair to say that the traditional system of conflict of laws has tended to minimize cases of outright discrimination in the realm

## CONCLUSION

Appellant respectfully requests that the decision of the Supreme Court of Georgia be reversed and that Ga. Code § 3-701 (1933) be declared unconstitutional.

Respectfully submitted,

MILES J. ALEXANDER,
EMMET J. BONDURANT II,
WILLIAM G. VANCE,
G. KIMBROUGH TAYLOR, JR.,
1045 Hurt Building,
Atlanta, Georgia 30303,
Counsel for Appellant.

*Of Counsel:*
KILPATRICK, CODY, ROGERS,
McCLATCHEY & REGENSTEIN,
1045 Hurt Building,
Atlanta, Georgia 30303.

*Of Counsel:*
BURDICK & SILVIAN,
324 Datura Street,
Post Office Box 2770
West Palm Beach, Florida 33402

---

of private law, thanks to its utilization of neutral and impersonal choice-of-law rules. It is difficult to cite cases in support of the elementary proposition that a law providing benefits for local citizens must in general provide the same benefits for nonresidents, including aliens, similarly situated."
CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS, 526, 541 (1963).

## PROOF OF SERVICE

Emmet J. Bondurant, attorney for Robert D. Watkins, Appellant herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on this 23rd day of August, 1966, I served a copy of the foregoing Brief for Appellant on the Appellee therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Martin McFarland, 808 William-Oliver Building, Atlanta, Georgia, 30303.

Emmet J. Bondurant,
1045 Hurt Building,
Atlanta, Georgia 30303,
Attorney for
Robert D. Watkins, Appellant

BLANK

PAGE

BLANK

PAGE

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 12 1966
JOHN F. DAVIS, CLERK

No. [redacted] 65

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

---

ROBERT D. WATKINS,

Appellant,

versus

J. F. CONWAY,

Appellee.

---

## BRIEF FOR THE APPELLEE

---

MARTIN McFARLAND
Suite 808
William-Oliver Building
Atlanta, Georgia 30303
Counsel for Appellee

Of Counsel:
MURPHY, McFARLAND AND TUROFF
Suite 808 William-Oliver Building
Atlanta, Georgia 30303

BLANK

PAGE

# INDEX


| | Page |
|---|---|
| OPINION BELOW | 1 |
| BASIS OF JURISDICTION | 1 |
| STATUTE INVOLVED | 1 |
| QUESTIONS PRESENTED | 2 |
| STATEMENT OF THE CASE | 6 |
| ARGUMENT | 7 |
| CONCLUSION | 17 |
| PROOF OF SERVICE | 19 |


## CASES CITED


| | |
|---|---|
| Metcalf vs. Watertown, 153 U.S. 671 (14 S.C. 947, 38 L.E. 861) | 15 |
| Great Western Tel. Co. vs. Purdy, 162 U.S. 329 (16 S.C. 810, 40 L. Ed. 986) | 15, 17 |
| Bacon vs. Howard, 20 How. 22, 15 L. Ed. 811 | 15 |
| Randolph vs. King, 20 F. Cas. No. 11,560, 2 Bond 104 | 15 |
| Schemmel vs. Cooksley, 256 Ill. 412, 100 N.E. 141 | 15 |
| Leathe vs. Thomas, 109 Ill. A. 434 (Aff. 216 Ill. 246, 75 N.E. 810, 4 Ann. Cas. 79) | 15 |
| Taylor vs. Joor, 7 La. Ann. 272 | 15 |
| Little vs. McVey (Sup) 47 A. 61 | 15 |
| Napier vs. Gidiere, 17 S.C. Eq. 215, 40 Am. D. 613 | 15 |
| Pryor vs. Moore, 3 Tex. 250 | 15 |

CASES CITED (Continued)

Page

Tourtelot vs. Booker (Civ. A.) 160 N.W. 293 ..... 15

G. E. Terry Ley, Trustee vs. C. L. Simmons, 249 S.W. 2d 808, 36 A.L.R. 2d 563 ..... 16

Randolph vs. King, 1867 Z Bond, 104 Fed. Cas. No. 11,560 ..... 17

Kelly vs. Heller, 222 Pac. 648 ..... 14, 17

Schemmel vs. Cooksley, 256 Ill. 412 ..... 17

Meek vs. Meek, 45 Iowa 294 ..... 15, 17

McArthur vs. Goddin, 12 Bush 274 ..... 17

Taylor vs. Joor, 7 La. Ann. 272 ..... 17

Napier vs. Gidiere, 17 S. Car. 215 ..... 17

Estes vs. Nyle, 1838 Meigs 34 (Antedating M'elmoyle vs. Cohen, U.S. Supra) ..... 17

Fields vs. Murphy, 106 Wis. 383 ..... 17

Kuykendall vs. Tod, 219 F. 707, 135 C.C.A. 379 ..... 17

Watkins vs. Conway, 221 Ga. Rep. 374; 144 S.E. 2d 721 (1965); 383 U.S. 941 (1966) ..... 1

Bosich vs. Skemitti, 112 Sou. 365 ..... 14

Constitutional Provisions and Statutes Cited

Article IV, Section I, United States Constitution ..... 15

Amendment XIV, Section I, United States Constitution ..... 18

Georgia Code Section 3-701 (1933) ..... 1, 5, 6, 7, 8, 18

STATUTES CITED (Continued)

Page

Georgia Code Section 110-1001 (1933), as amended by 1955 Ga. Laws, pp. 417, 418 ..... 2, 4, 5, 7, 8, 9, 10, 18

Georgia Code Section 110-1002 (1933) ..... 4, 5, 7, 9

Georgia Code Section 110-1003 (1933) ..... 10

Georgia Code Section 110-1004 (1933) ..... 10

Georgia Code Section 110-1005 (1933) ..... 11

Georgia Code Section 110-1006 (1933) ..... 11

Georgia Code Section 110-1007 (1933) ..... 11

Georgia Code Section 110-1008 (1933) ..... 12

Georgia Code Section 110-1009 (1933) ..... 12

Miscellaneous

50 C.J.S., Section 873, at page 448 ..... 14

34 C.J., page 1110, note 44 ..... 14

BLANK

PAGE

IN THE
SUPREME COURT OF THE UNITED STATES

No. 954

ROBERT D. WATKINS,
Appellant,

versus

J. F. CONWAY,
Appellee.

# BRIEF FOR THE APPELLEE

The decision of the Supreme Court of the State of Georgia as reported in the case of *Watkins vs. Conway, 221 Ga. Reports, page 374, 144 S.E. 2d., page 721 (1965)*, is printed in pages 10 through 12 of the record.

## BASIS OF JURISDICTION

On March 21, 1966, this Court noted probable jurisdiction and the case was placed on the Summary Calendar. (R. p. 16) *Watkins vs. Conway, 383 U.S. 941 (1966).*

## STATUTE INVOLVED

The appellant challenges the validity of the following statute, *Code Section 3-701 of the 1933 Code of the State of Georgia Annotated*, as follows:

> "Suits Upon Foreign Judgments—All suits upon judgments obtained out of this State shall be

brought within five years after such judgments shall have been obtained."

## QUESTIONS PRESENTED

The appellant poses as question number one, the following:

> QUESTION NUMBER ONE: Whether consistently with the full faith and credit clause, Georgia may apply a five-year statute of limitations to bar the enforcement of a foreign judgment while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an additional period of five years?

The appellee takes vigorous issue with the appellant as to both the form and substance of this question, and particularly the latter part of said question which reads,

> ". . . while permitting the enforcement of a domestic judgment rendered at the same time under similar circumstances for an *additional period of five years*".

The reason the appellee takes issue with the appellant in the phraseology of question number one is that *Section 110-1001 of the 1963 Code of Georgia* provides as follows, to-wit:

> "Chapter 110-1001 Dormancy of judgments — A judgment shall become dormant and shall not be enforced:

1. *When seven years shall elapse after the rendition of the judgment* before execution is issued thereon and entered on the general execution docket of the county wherein such judgment was rendered; or

2. Unless entry is made on the execution by an officer authorized to levy and return the same and such entry and the date thereof are entered by the clerk on the general execution docket within seven years after issuance of the execution and its record; or

3. Unless a bona fide public effort on the part of the plaintiff in execution to enforce the execution in the courts is made and due written notice of such effort, specifying the time of the institution of the suit or proceedings, the nature thereof, the names of the parties thereto and the name of the court in which it is pending, is filed by the plaintiff in execution or his attorney at law with the clerk and entered by said clerk on the general execution docket, all at such times and periods that seven years will not elapse between such entries of such notices or between such an entry and a proper entry made as prescribed in paragraph 2.

The record of the execution made as prescribed in paragraph 1 of this section, or of every entry as prescribed in paragaph 2 or in paragraph 3, shall institute a new seven-year period within which the judgment shall not be-

come dormant: Provided, that when an entry on the execution or a written notice of public effort is filed for record, the execution shall be recorded or rerecorded on the general execution docket with all entries thereon.

It shall not be necessary in order to prevent dormancy that such execution be entered or such entry recorded on any other docket."

Also, *Code Section 110-1002 of the 1933 Code of Georgia as amended*, provides:

"110-1002 (4355). Revival of dormant judgment. — A dormant judgment may be revived by scire facias or sued on within three years from the time it becomes dormant. (Act 1823, Cobb, 498. Acts 1884-5, p. 95; 1910, p. 121)."

Therefore, it is the law of this State and it is well recognized that without question, the limitation period on a domestic judgment in the State of Georgia is seven years *(Code Section 110-1001, supra)*, and may be revived for an additional period of three years by writ of scire facias *(Code Section 110-1002, supra)*.

How the appellant has construed a domestic judgment into a limitation period of ten years is unknown to the appellee. This is a stretch of imagination of the law and it is respectfully submitted by the appellee that the appellant has not forthrightly phrased his question in the presentation of question number one.

Therefore, as to question number one, the appellee says that since question number one is erroneously

based on an erroneous interpretation of the above quoted Code Sections, that the simple question number one as presented by the appellant should be as follows:

> "QUESTION NUMBER ONE — Consistently with the full faith and credit clause, is *Section 3-701 of the 1933 Code of Georgia* constitutional?"

Based on the same argument as to question number one, it is contended that question number two as presented by the appellant, is based on an erroneous interpretation of the above quoted Code Sections applicable in this case. It would seem, therefore, obviously, that the appellant misconstrues the above quoted Code Sections, *Section 110-1001 and Section 110-1002, supra,* so as to say five years additional, in lieu of two years additional.

It is a simple fact from a reading of the Code Sections that one must gain the following interpretation:

(1) The limitation in Georgia on its domestic judgments is seven years. (Code Section 110-1001).

(2) After seven years, the dormant judgment may be revived by suing out a writ of scire facias for an additional period of three years. *(Code Section 110-1002).*

Since Question Number Two is erroneously phrased, both in form and substance of interpretation, the appellee contends that the proper question would be:

"QUESTION NUMBER TWO—Under the equal protection clause, does the State of Georgia discriminate against judgments rendered in the Courts of other states, by applying *Code Section 3-701?*"

## STATEMENT OF THE CASE

The appellant, Robert D. Watkins, filed a personal injury suit against the appellee and one Charlie Ben Jones, in the Fifteenth Judicial Circuit of Florida, seeking damages. The appellant's petition as amended, alleges that a verdict was rendered in favor of the appellant on October 6,. 1952. That judgment was entered on said verdict some three years later, viz, October 5, 1955.

That thereafter, on October 5, 1960, five years and one day after the entry of said judgment, the appellant brought suit against the appellee on the Florida judgment in the Superior Court of Fulton County, Georgia.

The appellee defensively pled the Statute of Limitations, embracing the following Code Section:

> "*Georgia Code Section 3-701* — Suits upon foreign judgments — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

Thereafter, the Superior Court of Fulton County, Georgia, on or about June 1, 1965, after a hearing and argument of all counsel for parties litigant, did grant appellee's Motion For Summary Judgment on the

ground that it was barred by the Statute of Limitations of Georgia. *Code Section 3-701*, as above quoted.

The appellant timely appealed the ruling of Fulton Superior Court to the Supreme Court of the State of Georgia. On September 22, 1965, after oral argument by counsel for litigant parties, the Supreme Court of Georgia affirmed the decision of the Trial Court, upholding the constitutionality of said Code Section, and adjudging that the said Code Section neither violated the Full Faith and Credit clause, nor the equal protection clause of the Constitution. Appellant's Motion For Rehearing was denied on October 7, 1965.

## ARGUMENT

The appellant in his brief, on page five, submits again the erroneous conclusion that under Georgia law, domestic judgments remain enforceable for a period of ten years, while the judgments of other states are enforceable for only five years. This is an erroneous conclusion and interpretation of *Code Section 110-1001* and *Section 110-1002 of the 1933 Code of Georgia as amended.*

In no sense of the word is there any discrimination as is contended by the appellant, and was so ruled by the Supreme Court of the State of Georgia.

The appellant, on page five of his brief, states the following:

> "The right of a state to impose some limitation period against foreign judgments is not questioned in this case. It is clear that a state may

apply a statute of limitations to foreign judgments, so long as it does so evenhandedly, without discrimination."

Obviously, this is a correct statement of the law.

It is contended by the appellee that when the legislature of the State of Georgia dealt with foreign judgments in *Code Section 3-701*, it was solely dealing with the name class "foreign judgments", which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time, as provided in *Code Section 110-1001, supra.*

Certainly a limitation period of five years as to foreign judgments as a class is a reasonable time and also evenhandedly deals with the other states and without discrimination as to the other states. It is argued that since the State of Georgia may apply a statute of limitations reasonable in character, evenhandedly, this Code Section is entirely proper, legal and constitutional. This is what the State of Georgia has done. This statute has stood as a fair, proper and just statute. Not only does this statute apply in Georgia, similar statutes apply in most all the states of the union.

The appellee cites the case of *Hughes vs. Fetter, 341 U.S. 609 (1951)* and *Wells vs. Simonds Abrasive Co.*, 345 *U.S. 514 (1953)*. These two cases deal with the bringing of suits. *Code Section 3-701*, under attack, is unrelated to suits of any kind. This statute under attack, refers solely to enforceability and the above cited authorities by the appellant are therefore irrelevant and immaterial in this consideration. The rationale of these two

cases as contradistinguished from the case before the Bar of this Court is that the two cases involve the right to bring a cause of action in tort, whereas, we have here before us an indolent plaintiff who waited more than five years to bring a suit based on his foreign judgment.

Can it not be said, that a period of five years is reasonable and is a sufficient length of time for a diligent plaintiff to pursue this cause of action. Can it also not be said that this plaintiff, appellant Robert D. Watkins, was indolent in not bringing his suit based on his foreign judgment until after the five year statute had tolled.

On page seven of the brief of the appellant, there is the following quotation:

> "Discrimination can be justified under the equal protection clause only if there are reasonable differences between the favored and disfavored classes which justify an unequal classification."

Here, we say that there is no discrimination. The five year statute is reasonable. The five year statute applies to all of the states of the union. The law refers solely to enforceability and is unrelated to suits of any kind. The law is constitutional.

The appellant, on page seven of his brief under the Argument title again continues to argue his interpretations of *Georgia Code Sections 110-1001 and 110-1002, supra*, as to the Georgia judgment remaining enforceable for a period of ten years. It is finally and vigorously argued that:

(1) The limitation of the Georgia law on its domestic judgments is seven years. *Code Section 110-1001.*

(2) This dormant domestic judgment after a period of seven years remains dormant for a period of three years upon which a new suit by writ of scire faciás may be brought, during such three year period to revive such Georgia judgment.

The attention of the Court is invited to the following Code Sections for its information:

*1933 Code of Georgia Annotated, Section 110-1003.*

"110-1003. (5973) Manner of renewal of dormant judgments; limitations. — When any judgment obtained in any court of this State shall become dormant, the same may be renewed by an action or by scire facias, at the option of the plaintiff, within three years from the time it became dormant. (Acts 1823, Cobb, 498)."

*1933 Code of Georgia Annotated, Section 110-1004.*

"110-1004. (5974) Actions to renew judgments, where brought. An action to renew a dormant judgment shall be brought in the county where the defendant resides at the commencement of the action."

*1933 Code of Georgia Annotated, Section 110-1005.*

"110-1005. (5975) Scire facias to revive. — Scire facias to revive a judgment is not an original action, but the continuation of the suit in which the judgment was obtained."

*1933 Code of Georgia Annotated, Section 110-1006.*

"110-1006. (5976) Issuance, return, direction, service, etc., of scire facias. — A scire facias to revive a dormant judgment in the superior courts must issue from and be returnable to the court of the county in which the judgment was obtained, shall be directed to all and singular the sheriffs of this State, and signed by the clerk of such court, who shall make out copies thereof, which shall be served by the sheriff of the county in which the party to be notified may reside, 20 days before the sitting of the court to which it is made returnable, and the original returned to the clerk of the court from which it issued; and an original and copy shall issue for each county in which any party to be notified may reside."

*1933 Code of Georgia Annotated, Section 110-1007.*

"110-1007 (5977) Revival of judgments against nonresidents — If the defendant or party to be notified shall reside out of this

State, a dormant judgment may be revived against such defendant or his representative by such process as is issued in cases where the defendant resides in this State: Provided, that the defendant or party to be notified shall be served with scire facias by publication in the newspaper in which the official advertisements of the county are published, twice a month for two months previous to the term of the court at which it is intended to revive said judgment; which service shall be as effectual in all cases as if the defendant or person to be notified had been personally served. (Act 1850, Cobb, 502)."

*1933 Code of Georgia Annotated, Section 110-1008.*

"110-1008. (5978) Judgment of revival, when taken; trial by jury. — In all cases of scire facias to revive a judgment, when service has been perfected as herein provided, such judgment may be revived, on motion, at the first term, without the intervention of a jury, unless the defendant shall file an issuable plea under oath, in which case the defendant shall be entitled to a trial by jury as in other cases."

*1933 Code of Georgia Annotated, Section 110-1009.*

"110-1009 (5979) Scire facias in favor of transferee. — The scire facias when the judgment has been transferred, shall issue in

> the name of the original plaintiff for the use of the transferee."

There can be no question therefore that in Georgia, the limitation period on its domestic judgments is seven years. Where the appellant gets ten years comes through additional legal proceedings.

In the case of *M'elmoyle vs. Cohen, 38 U.S. (13 Pet.) 312 (1839)*, this Court held that the forum state (Georgia) might apply its own statute of limitations to a foreign judgment and the Court based its holding on the reasoning that the statute of limitations was a plea to the remedy and not to the merits of the cause of action and consequently would bar the cause.

The appellant, on page nine of his brief cites the following:

> (1) "The Court's rationale (referring to the M'elmoyle vs. Cohen case, supra,) was that the forum state may legislate limitations upon the remedy, (i.e., procedural limitations), although it could not legislate any limitations upon the merits of the foreign judgment." (Perfectly, this is the contention. The Supreme Court of Georgia was correct. There was no attempt by the Supreme Court of the State of Georgia to go into the merits of the case. This law refers solely to its enforceability or procedure of limitations and is unrelated to suits of any kind.)

The appellant compares his position with the merits of certain causes of action regarding tort cases, whereas the matter before this Court relates simply, solely and completely and exclusively only to the enforceability. This statute is constitutional.

Surely, it cannot be said that there is discrimination in this particular statute, or as to its applicability in the case before the Bar of this Court. This statute does not violate full faith and credit, nor equal protection clauses of the United States Constitution and thusfar, no authorities have been cited by the appellant to the contrary.

On the contrary, the appellee cites to this Court the following:

Citations and Principles of Law:

> *50 Corpus Juris Secundum, Section 873, page 448 provides:*
>
> "The constitutional provision requiring 'full faith and credit' to be given to the judgments of other states is not violated by a statute imposing a reasonable period of limitation on the bringing of suits on such judgments." Citing *Kelly vs. Heller, 222 Pacific, page 648; 74 Colorado, page 470; and Bosich vs. Skemitti, 112 Southern, page 365; 146 Mississippi, page 491; 52 A. L. R. page 564; 34 Corpus Juris page 1110, note 44.*

It has been held that the constitutional provision requiring "full faith and credit" to be given to the judg-

ments of other states is not violated by the statute imposing the reasonable period of limitation upon the bringing of suit on such judgments:

U.S. — *Bacon vs. Howard, 20 How. 22, 15 L. Ed. 811; Randolph vs. King, 20 F. Cas. No. 11,560; 2 Bond, 104.*

Ill. — *Schemmel vs. Cooksley, 256 Ill. 412, 100 N.E. 141; Leathe vs. Thomas, 109 Ill. A. 434 (Aff. 218 Ill. 246, 75 NE. 810, 4 Ann. Cas. 79).*

Iowa — *Meek vs. Meek, 45 Iowa 294.*

La. — *Taylor vs. Joor, 7 La. Ann. 272.*

N. J. — *Little vs. McVey, (Sup.) 46 A. 61.*

S. C. — *Napier vs. Gidiere, 17 S. C. Eq. 215, 40 Am D. 613.*

Tex. — *Pryor vs. Moore, 8 Tex. 250; Tourtelot vs. Booker, (Civ. A.) 160 N.W. 293.*

It is also well established that a statute limiting the time within which an action may be brought on a judgment of a Court of another state does not violate the "full faith and credit" clause of the Federal Constitution as is held in the following citations:

*U.S.C.A. Constitution, Article IV, Section 1;*
*Great Western Telegraph Co. vs. Purdy, 162 U.S. 329;*
*16 S. Ct. 810;*
*40 L. Ed. 986;*
*Metcalf vs. City of Watertown, 153 U.S. 671;*
*14 S. Ct. 947;*
*38 L. Ed. 861.*

In the case of *G. E. Terry Ley, Trustee, vs. C. L. Simmons, et al, Kentucky Court of Appeals, June 20, 1952, 249 S. W. 2d 808; 36 A. L. R. 2d 563;* it was held as follows:

(a) The law of the forum governs remedies and procedures.

(b) In the absence of a contrary statutory provision, the time limitation to an action to enforce judgment obtained in another state is controlled by the law of the forum.

(c) A statute limiting the time within which an action may be brought on a judgment of a court of another state does not violate the "full faith and credit" clause of the Federal Constitution.

(d) A statute of limitations does not extinguish the legal right but merely effects the remedy.

(e) That a state statute prohibits maintenance of an action on a judgment of a court of another state where the action is barred by the statute of limitations of that state does not preclude application of the period of the local statute to bar an action on a judgment not barred by the statute of limitations of the state of its rendition.

The contention that a statute of limitation of the forum as to a suit on a foreign judgment violated the

"full faith and credit" clause of the Federal Constitution has also been expressly overruled in the following cases:

| | |
|---|---|
| U.S. | — *Randolph vs. King, 1867 Z Bond 104 Fed. Cas. No. 11,560;* |
| Col. | — *Kelly vs. Heller, 74 Col. 470, 222 Pac. 648;* |
| Ill. | — *Schemmel vs. Cooksley, 256 Ill. 412;* |
| Iowa | — *Meek vs. Meek, 45 Iowa 294;* |
| Ky. | — *MacArthur vs. Goddin, 12 Bush 274;* |
| La. | — *Taylor vs. Joor, 7 La. Ann. 272;* |
| S. C. | — *Napier vs. Gidiere, 17 S. Car. 215;* |
| Tenn. | — *Estes vs. Nyle, 1838 Meigs, 34 (Antedating M'elmoyle vs. Cohen (U.S. Supra) );* |
| Wis. | — *Fields vs. Munday, 106 Wis. 383.* |

**CONCLUSION**

The statute of limitations of five years is reasonable. (See *Great Western Tel. Co. vs. Purdy, supra,* as compared to *Kuykendall vs. Tod, 219 Fed. 707,* which held a three month period of limitation unconstitutional.)

As Mr. Chief Justice Duckworth of the Supreme Court of Georgia pointed out:

1. This code Section refers solely to enforceability and not to suits of any kind.

2. There is no statutory law of the State of Georgia dealing with suite on domestic

judgments, and none have been cited by counsel for the appellant.

3. When the Legislature dealt with foreign judgments, in Code Section 3-701, it was dealing with the name class "foreign judgments", which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Georgia Code Section Annotated 110-1001.

Therefore, AS TO QUESTIONS NUMBER ONE AND TWO, full faith and credit as required by the Constitution and equal protection as required by the Fourteenth Amendment is not denied foreign judgments by Code Section 3-701 of the 1933 Code of Georgia as amended.

Appellee respectfully requests that the decision of the Supreme Court of Georgia be affirmed and that Georgia Code Section 3-701 (1933) be declared constitutional.

Respectfully submitted,

MARTIN McFARLAND
Suite 808 William-Oliver
Building
Atlanta, Georgia 30303
Counsel for Appellee

Of Counsel:
Murphy, McFarland and Turoff
Suite 808 William-Oliver Building
Atlanta, Georgia 30303

## PROOF OF SERVICE

MARTIN McFARLAND, attorney for J. F. Conway, Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the _____ day of _____, 1966, I served a copy of the foregoing Brief For The Appellee on the Appellant therein named, by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorney of record, Kilpatrick, Cody, Rogers, McClatchey & Regenstein, 1045 Hurt Building, Atlanta, Georgia 30303.

MARTIN McFARLAND
Suite 808 Wil[illegible]n-Oliver
Building
Atlanta, Georgia [illegible]3
Attorney for J. F. Conway,
Appellee

BLANK

PAGE

# SUPREME COURT OF THE UNITED STATES

No. 65.—October Term, 1966.

Robert D. Watkins, Appellant, *v.* J. F. Conway. | On Appeal From the Supreme Court of Georgia.

[December 5, 1966.]

Per Curiam.

This litigation began when appellant Watkins brought a tort action against Conway in a circuit court of Florida. On October 5, 1955, that court rendered a $25,000 judgment for appellant. Five years and one day later, appellant sued upon this judgment in a superior court of Georgia. Appellee raised § 3–701 of the Georgia Code as a bar to the proceeding:

> "Suits upon foreign judgments.—All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

The Georgia trial court gave summary judgment for appellee. In so doing, it rejected appellant's contention that § 3–701, when read against the longer limitation period on domestic judgments set forth in Ga. Code §§ 110–1001, 1002 (1933), was inconsistent with the Full Faith and Credit and Equal Protection Clauses of the Federal Constitution. The Georgia Supreme Court affirmed, also rejecting appellant's constitutional challenge to § 3–701. 221 Ga. 374, 144 S. E. 2d 721 (1965). We noted probable jurisdiction under 28 U. S. C. § 1257 (2). 383 U. S. 941 (1966).

Although appellant lays his claim under two constitutional provisions, in reality his complaint is simply that Georgia has drawn an impermissible distinction between foreign and domestic judgments. He argues that the statute is understandable solely as a reflection of Georgia's desire to handicap out-of-state judgment creditors. If

appellant's analysis of the purpose and effect of the statute were correct, we might well agree that it violates the Federal Constitution. For the decisions of this Court which appellee relies upon do not justify the discriminatory application of a statute of limitations to foreign actions.[1]

But the interpretation which the Georgia courts have given § 3–701 convinces us that appellant has misconstrued it. The statute bars suits on foreign judgments only if the plaintiff cannot revive his judgment in the State where it was originally obtained. For the relevant date in applying § 3–701 is not the date of the original judgment, but rather it is the date of the latest revival of the judgment. *Fagan* v. *Bently*, 32 Ga. 534 (1861); *Baty* v. *Holston*, 108 Ga. App. 359, 133 S. E. 2d 107 (1963). In the case at bar, for example, all appellant

[1] The case most directly on point, *M'Elmoyle* v. *Cohen*, 13 Pet. 312, upheld the Georgia statute with which we deal today. But the parties in that case did not argue the statute's shorter limitation for foreign judgments as the ground of its invalidity. Instead, the issue presented to this Court concerned the power of the States to impose any statute of limitations upon foreign judgments. See argument for plaintiff, 13 Pet., at 313–320. The language of Mr. Justice Wayne's opinion—"may not the law of a state fix different times for barring the remedy in a suit upon a judgment of another state, and for those of its own tribunals," 13 Pet., at 328—must be read against this argument. And, of course, that opinion cannot stand against an equal-protection claim, since it was written nearly 30 years before the Fourteenth Amendment was adopted.

Neither of the cases cited by the Georgia Supreme Court dictates the result of this case. The first, *Metcalf* v. *Watertown*, 153 U. S. 671, involved a Wisconsin statute which provided a shorter limitation for foreign, as opposed to domestic, judgments. But the holding of the case was merely that this statute should be construed as placing the same limitation on the judgment of a federal court sitting in Wisconsin as would apply to a judgment of a Wisconsin state court. The other precedent cited by the court below, *Great Western Tel. Co.* v. *Purdy*, 162 U. S. 329, dealt with an Iowa statute of limitations on judgments that placed the same limitation on orders of foreign and domestic courts.

need do is return to Florida and revive his judgment.[2] He can then come back to Georgia within five years and file suit free of the limitations of § 3–701.

It can be seen, therefore, that the Georgia statute has not discriminated against the judgment from Florida. Instead, it has focused on the law of that State. If Florida had a statute of limitations of five years or less on its own judgments, the appellant would not be able to recover here.[3] But this disability would flow from the conclusion of the Florida Legislature that suits on Florida judgments should be barred after that period.[4] Georgia's construction of § 3–701 would merely honor and give effect to that conclusion. Thus, full faith and credit is insured, rather than denied, the law of the judgment State. Similarly, there is no denial of equal protection in a scheme that relies upon the judgment State's view of the validity of its own judgments. Such a scheme hardly reflects invidious discrimination.

*Affirmed.*

MR. JUSTICE DOUGLAS dissents.

---

[2] The Florida statute of limitations on domestic judgments is 20 years. Fla. Stat. Ann. § 95.11 (1) (1960). Thus, it appears that appellant still has ample time to revive his judgment and bring it back to Georgia. See *Massey* v. *Pineapple Orange Co.*, 87 Fla. 374, 100 So. 170 (1924); *Spurway* v. *Dyer*, 48 F. Supp. 255 (D. C. S. D. Fla. 1942). Moreover, appellant can obtain substituted service of process over appellee in his revival proceeding. Fla. Stat. Ann. § 48.01 (9) (1943).

The Florida procedure for reviving judgments is similar to that of Alabama—Ala. Code, Tit. 7, § 574 (1960)—which was held in *Baty* v. *Holtson*, 108 Ga. App. 359, 133 S. E. 2d 107 (1963), to revive a foreign judgment under § 3–701.

[3] Such a short statute of limitations for domestic judgments is by no means a matter of mere speculation. See 2 Freeman, The Law of Judgments, § 1076 (1925).

[4] If the appellant held a judgment from a State which did not consider its judgments to become dormant, so that no revival proceeding could be brought, we would be faced with a different case. See *Frank* v. *Wolf*, 17 Ga. App. 468, 87 S. E. 697 (1916).